

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 4.3.602 pertaining to) PROPOSED AMENDMENT
nonrefundable application fees)

TO: All Concerned Persons

1. On September 28, 2023, at 8:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than September 25, 2023, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts St., Helena, Montana, 59620-0201; telephone (406) 444-5402; fax (406) 444-5409; TDD/Montana Relay Service (406) 444-3144; or e-mail agr@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

4.3.602 QUALIFICATIONS (1) through (8) remain the same.

(9) A There is a nonrefundable application fee of \$75 ~~\$35 will be required~~ with all applications.

AUTH: 80-2-106, MCA
IMP: 80-2-103, MCA

Reason and economic impact: The cost and time involved in reviewing the applications must be paid by the program both have increased significantly since 1985. The number of applications is expected to increase as interest rates increase and the government programs in this area become more active. The new application fee is expected to affect 10 to 20 people a year (\$40 per person), generating about \$400 to \$800.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, 302 N. Roberts St, Helena, Montana, 59620-0201; telephone (406) 444-5402; fax (406) 444-5409; or e-mail cojensen@mt.gov, and must be received no later than 5:00 p.m., October 6, 2023.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christy Clark
Christy Clark
Director
Department of Agriculture

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 4.17.107 pertaining to annual) PROPOSED AMENDMENT
report and assessment fees)

TO: All Concerned Persons

1. On September 29, 2023, at 8:30 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than September 26, 2023, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts St., Helena, Montana, 59620-0201; telephone (406) 444-5402; fax (406) 444-5409; TDD/Montana Relay Service (406) 444-3144; or e-mail agr@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted mater interlined:

4.17.107 ANNUAL REPORT AND ASSESSMENT FEES (1) remains the same.

(2) The assessment fee for producers is 0.5% of sales except that the minimum producer assessment is \$150 and the maximum producer assessment is ~~\$5,000~~ \$3,000.

(3) through (5) remain the same.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

Reason: The current maximum fee is higher than the standard charged by other certifiers. On the advice of the Organic Advisory Council, we are lowering the fee to be more comparable to other certifiers. The program has adequate revenue to make this lower fee sustainable. At the current time it only affects two operations. The two affected growers will each pay \$2,000 less in fees for a total impact to the program of \$4,000.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, 302 N. Roberts St., Helena, Montana, 59601; telephone (406) 444-5402; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., October 26, 2023.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christy Clark
Christy Clark
Director
Department of Agriculture

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 4.13.1001B pertaining to State) PROPOSED AMENDMENT
Grain Lab Fee Schedule)

TO: All Concerned Persons

1. On September 29, 2023, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than September 26, 2023, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts St., Helena, Montana, 59620-0201; telephone (406) 444-5402; fax (406) 444-5409; TDD/Montana Relay Service (406) 444-3144; or e-mail agr@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted mater interlined:

4.13.1001B GRAIN FEE SCHEDULE (1) Effective Date: The effective date of this rule is ~~July 1, 2022~~ January 1, 2024.

(2) General Provisions: These general provisions applying to all sections of this rule are as follows:

(a) Service Hours: Normal office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. All other hours and holidays will be considered overtime.

(b) Sampling Hours: Sampling hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. An applicant must place service requests with the inspection office by 10:00 a.m. during regular hours for same day inspection/sampling services. All requests for sampling services to be performed outside of normal business hours must be received by 2:00 p.m. of the preceding business day. Sampling services requested to be performed outside of normal office hours, including holidays, will be charged overtime.

(c) Regular Hourly Rate: The regular hourly rate for travel time and stand-by fee is ~~\$50~~ \$60 per hour per individual assessed in half-hour intervals with a minimum of two hours charged.

(d) Overtime and Holiday Hourly Rate: Overtime and holiday hourly rate is ~~\$75~~ \$90 per hour per individual assessed in half-hour intervals. A minimum four-hour charge will be assessed except when before or for a continuation of a regular work day, then actual overtime hours will be charged.

(e) Holidays: Holidays are as adopted in 1-1-216, MCA. (e.g., New Year's Day, Martin Luther King Jr. Day, President's Day, Independence Day, Labor Day,

Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day, ~~and State Election Day.~~)

(f) Mileage and Travel Fees: Mileage, travel time, and travel expenses are as follows:

(i) Mileage Fee: Mileage charges shall be assessed per 2-18-501, MCA for State employees which is equal to the United State Internal Revenue Service (IRS) mileage allotment. Any change to the mileage rate is effective when the IRS changes their standard mileage rate. The mileage charges will be prorated where possible.

(ii) Hourly and Overtime Rate: For each trip requested, the applicant will be charged at the regular hourly rate, except when work is conducted while in overtime status or on holidays. Work conducted while in overtime status or on holidays will be charged at the overtime rate, prorated where possible.

(iii) Travel Expenses: Travel expenses (as defined by Montana Operations Manual Travel Policy with Rates) including but not limited to per diem, lodging, and mileage will be assessed to the applicant in addition to other fees and charges.

(iv) Staffing: Montana State Grain Laboratory will determine the number of personnel to properly provide the service requested. To assure personal safety, Montana State Grain Lab may suspend sampling services due to inclement weather conditions as well as sampling rail cars at night with insufficient lighting, or other potentially hazardous conditions.

(v) Observation: In order to provide official services, Montana State Grain Lab must be physically able to observe elevator personnel sampling and/or sealing a railcar.

(3) Miscellaneous Fees:

(a) In case of a data entry or typographical error, a corrected certificate will be issued without a fee.

(b) Postage: Actual postage or delivery service charges will be added to sampling and other fees.

(c) Special Requests: Requests for services not covered by this rule will be performed at the applicable hourly rate stated herein plus mileage and travel time if applicable.

(4) Sanitation Inspection: A base fee of \$100 will be charged per inspection in addition to the applicable hourly rate stated herein plus mileage and travel charges.

(5) Diverter Inspection: A base fee of ~~\$100~~ \$120 will be charged per inspection in addition to the applicable hourly rate stated herein plus mileage and travel charges.

(a) Base fee is ~~\$500~~ \$600 for certification of new diverters.

(6) Payment of Fees and Charges: All department fees and charges for services rendered are due within thirty days of the statement date. Finance charges of ~~\$25~~ \$30 per month shall accrue on any balance owed after thirty days of the statement date. If the department does not receive payment within thirty days, services may be withheld until the delinquent account is paid; or cash payment for the subsequent services may be required.

(7) Retests/Reinspections based on a File Sample and/or New Sample: will cost the same as the original test/inspection.

(8) Export Documentation Request: Processing and handling fee for sample preparation and export documentation.....~~\$7.50~~ \$9.00 per request

(9) FGIS Administrative Tonnage Fees: In addition to all other applicable fees, FGIS administrative tonnage fees for export grain shipments inspected and/or weighed, excluding land carrier shipments to Canada and Mexico, will be assessed at the current per metric ton rate identified by FGIS Directive 9180.74 Service Fees and Billing Codes, Attachment 1. Invoices will identify assessed administrative tonnage fees as separate line items per applicable carrier/unit type.

(10) FGIS Supervision Fees: In addition to all other applicable fees, FGIS supervision fees for domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico, will be assessed at the current per metric ton rate identified by FGIS Directive 9180.74 Service Fees and Billing Codes, Attachment 2. Invoices will identify assessed supervision fees as separate line items per applicable carrier/unit type.

(11) United States Grain Standards Act (USGSA) Fees for official services under the United States Grain Standards Act (USGSA) as amended.

(a) Effective Date: The effective date of this rule is ~~July 1, 2022~~ January 1, 2024.

(b) General Provisions: General provisions applying to all sections of this rule are as follows:

(c) Official Lot Inspection: Official lot inspection sampling with grade, on bulk, boxcar, hopper car, or truck/trailer, per request, sampling and grade only:

(i) Level One: Level one official sampling service when the State Grain Laboratory furnishes the sampling crew.....\$25.00 per unit

(ii) Level Two: Level two official sampling service when the State Grain Laboratory furnishes a licensed sampler to write identification tickets, supervise elevator employees while sampling and seal samples for delivery to the State Grain Laboratory.....\$18.00 per unit

(iii) Sampling Only: Sampling only (does not include grade) on bulk, boxcar, hopper car or truck/trailer, per request, (all grains).....\$15.00 per unit

(A) Additional Probes (in addition to original sampling charges).....\$15.00 per unit

(iv) Stowage Examination: Stowage examination.....\$8.00 per unit

(v) Sealing Railcars: (Metal Seals) DT or Probe Railcars per Seal, Additional Labor and hourly charges may apply.....\$2.50 per seal

Supervise Elevator Personnel applying seals (recording seals on certificate).....\$4.00 per unit

(vi) The Montana State Grain Laboratory is not responsible for the seals after Montana State Grain Laboratory personnel leave the applicant's property. It is the applicant's responsibility to confirm that all seals have been applied by Montana State Grain Laboratory personnel to their satisfaction. In excess of one hour, the hourly rate applies.

(d) Submitted Sample Inspection: inspection includes DKT (damaged kernels total) identified, FM (foreign material) identified, SHBN (shrunken and broken kernels), and DEF (total defects).

(i) Submitted Canola Samples\$16.00 per sample

- (ii) Submitted Spring Wheat (includes DHV testing).....\$13.00 per sample
 - (iii) Submitted (other USGSA sample)\$10.00 per sample
 - (e) Laboratory Analyses Fee:
 - (i) Protein Test: Near Infrared Transmittance (NIRT) on wheat, barley, and corn.....\$7.50 per sample
 - (ii) Single Factor Determination: Factor only determination\$7.00
 - (iii) Additional: Additional statements, factors, or results as requested by the applicant including the absence of particular allergens in visible form\$5.00 each
 - (iv) Malting Barley Analysis: Malting barley analysis includes actual percent of plump barley, skinned and broken kernels, and thin barley, per request\$5.00 per sample
 - (v) Mycotoxin: per quantitative analysis test.....\$50.00 per sample
 - (vi) Composite Sample Preparation (per sample, in composite).....\$1.25 per sample
 - (vii) Composite Sample Preparation (per sample, if requested after grade).....\$2.75 per sample
 - (viii) Return shipping and handling post grading (not to exceed \$30/month).....\$3.00 per sample
 - (f) Official Commercial Services performed under the USGSA:
 - (i) Official commercial inspection services and fees may be negotiated on a case-by-case basis.
 - (12) Pulse and Processed Commodity Fee Schedule under the Agricultural Marketing Act (AMA):
 - (a) Effective Date: The effective date of this rule is ~~July 1, 2022~~ January 1, 2024.
 - (b) General Provisions: General provisions applying to all sections of this rule are as follows, including hourly rate, overtime and holiday rates.
 - (c) Fees for official services provided under the Agricultural Marketing Act of 1946 (AMA) as amended:
 - (d) Sampling Fees: Sampling fees for grade or phytosanitary certification:
 - (i) Bulk Samples: Bulk samples from boxcars, hopper cars, truck/trailers.....~~\$15.00~~ \$18.00 per unit
 - (A) Additional probes (in addition to original sampling charges).....~~\$15.00~~ \$18.00 per unit
 - (ii) Sealing: Metal Seals
DT or Probe per Seal; Additional Labor and hourly charges may apply.....~~\$2.50~~ \$3.00 per seal
Supervise elevator personnel applying seals (recording seals on certificate).....~~\$4.00~~ \$4.80 per unit
- The Montana State Grain Laboratory is not responsible for the seals after Montana State Grain Laboratory personnel leave the applicant's property. It is the applicant's responsibility to confirm that all seals have been applied by Montana State Grain Laboratory personnel to their satisfaction.

| | |
|--|--|
| (iii) Bagged Lots: bagged lots or totes..... | Hourly Rate |
| (e) Inspection Fee: | |
| (i) Grade Only: grade only per lot or submitted sample: field run..... | \$24.00 <u>\$28.80</u> per sample |
| (ii) Grade Only: grade only per lot or submitted sample: other than field run..... | \$20.00 <u>\$24.00</u> per sample |
| (iii) Single Factor Determination: one factor only determination..... | \$7.00 <u>\$8.40</u> |
| (iv) Additional: additional statements, factors, or results as requested by the applicant..... | \$5.00 <u>\$6.00</u> per factor |
| (f) Composite Sample Preparation (per sample in composite)..... | \$1.25 <u>\$1.50</u> per sample |
| (i) Composite Sample Preparation (per sample, if requested after grade)..... | \$2.75 <u>\$3.30</u> per sample |
| (ii) Seed Count per Ounce..... | \$5.00 <u>\$6.00</u> per ounce |
| (iii) Return shipping and handling post grading (not to exceed \$30/month)..... | \$3.00 <u>\$3.60</u> per sample |
| (g) Laboratory Analysis Fee: | |
| (i) Falling Number Determinations: falling number determination for wheat..... | \$18.00 <u>\$21.60</u> per sample |
| (13) Fees for laboratory services not performed under the USGSA or AMA: Commodities inspected under Montana Standards | |
| (a) General Provisions: general provisions applying to all sections of this rule are as follows: | |
| (b) Lot Inspection: Lot inspection sampling with grade for bulk, boxcar, hopper car or truck-trailer, per request, sampling and grade only: | |
| (i) Level One: Sampling service fee when the Montana State Grain Laboratory furnishes the sampling crew..... | \$25.00 <u>\$30.00</u> per sample |
| (ii) Level Two: Sampling service fee when the Montana State Grain Laboratory furnishes a licensed sampler to write identification tickets, supervise elevator employees while sampling, and seal samples for delivery to the Montana State Grain Laboratory..... | \$18.00 <u>\$21.60</u> per sample |
| (iii) Lot reinspection based on file sample..... | all regular fees assessed |
| (iv) Sampling Only: sampling only (does not include grade)—bulk, boxcar, hopper car or truck/trailer, per request (all grains)..... | \$15.00 <u>\$18.00</u> per sample |

| | | |
|--|---------------------|----------------|
| (A) Additional Probes (in addition to original sampling charges)..... | \$15.00 | <u>\$18.00</u> |
| per unit | | |
| (B) Sealing: Metal Seals: | | |
| DT or Prober per Seal; Additional Labor and Hourly Charges may apply..... | \$2.50 | <u>\$3.00</u> |
| per sample | | |
| Supervise Elevator Personnel applying seals (recording seals on certificate)..... | \$4.00 | <u>\$4.80</u> |
| per unit | | |
| The Montana State Grain Laboratory is not responsible for the seals after the Montana State Grain Laboratory personnel leave the applicant's property. It is the applicant's responsibility to confirm that all seals have been applied by Montana State Grain Laboratory personnel to their satisfaction. | | |
| (v) Stowage Examination: Stowage examination..... | \$8.00 | <u>\$9.60</u> |
| per unit | | |
| (vi) After First Hour..... | Hourly rate applies | |
| (c) Submitted Sample Inspection: Submitted sample inspection includes DKT (damaged kernels total) identified, FM (foreign matter) identified, SHBN (shrunken and broken kernels), and DEF (total defects). | | |
| (i) Submitted Sample: Submitted Montana specialty crop grades (unless specifically listed) per sample..... | \$10.00 | <u>\$12.00</u> |
| per sample | | |
| (ii) Non Official Single Factor Determination..... | \$7.00 | <u>\$8.40</u> |
| per factor | | |
| (iii) Additional: Additional statements, factors, or results as requested..... | \$5.00 | <u>\$6.00</u> |
| per factor | | |
| (d) Submitted Buckwheat Grades: | | |
| (i) Processed Buckwheat Sample..... | \$14.00 | <u>\$16.80</u> |
| per sample | | |
| (ii) Field Run Buckwheat Sample..... | \$15.00 | <u>\$18.00</u> |
| per sample | | |
| (e) Hulless or Hulless Waxy Barley: | | |
| (i) Submitted hulless or hulless waxy barley..... | \$14.00 | <u>\$16.80</u> |
| per sample | | |
| (f) Laboratory Analysis Fee: | | |
| (i) Protein Test: non-official NIRT (e.g., Khorasan)..... | \$7.50 | <u>\$9.00</u> |
| per sample | | |
| (ii) Malting Barley Germination: Malting barley: germination 72-hour blotter..... | \$10.00 | <u>\$12.00</u> |
| per determination | | |
| (iii) Non-Official Falling Number: Falling number determination on commodities other than wheat (e.g. Khorasan)..... | \$18.00 | <u>\$21.60</u> |
| per determination | | |
| (iv) Mycotoxin: per quantitative analysis test | \$50.00 | <u>\$60.00</u> |
| per sample | | |

- (v) Composite Sample Preparation (per sample in composite).....~~\$1.25~~ \$1.50 per sample
- (vi) Composite Sample Preparation (per sample, if requested after grade).....~~\$2.75~~ \$3.30 per sample
- (vii) Return shipping and handling post grading (not to exceed \$30/month).....~~\$3.00~~ \$3.60 per sample

AUTH: 80-4-403, 80-4-721, MCA
IMP: 80-4-721, MCA

REASON: State Grain Lab fee changes represent the Montana Department of Agriculture's aim to align sampling and grading activities with actual costs of services. The United States Department of Agriculture (USDA) Federal Grain Inspection Service (FGIS) has approved all requested changes. FGIS also concurs that fees accurately reflect the cost of services provided and are consistent with fees charged by other FGIS providers.

Anticipated revenue changes for fees and thus the projected impact to small businesses in Montana are listed in Table 1 below.

| Service Description | Current Fee | New Fee | Number of customers (FY22) | Avg. Increase per customer |
|---------------------------|-------------|----------|----------------------------|----------------------------|
| ADDITIONAL - ACTUAL DKG | \$ 3.00 | \$ 3.60 | 204 | \$ 3.31 |
| ADDITIONAL REQUESTS | \$ 5.00 | \$ 6.00 | 748 | \$ 10.89 |
| AFLATOXIN TESTS | \$ 50.00 | \$ 60.00 | 12 | \$ 12.50 |
| AMA OVERTIME/HOLIDAY | \$ 75.00 | \$ 90.00 | 17 | \$ 58.24 |
| AMA PROCESSED GRADE | \$ 20.00 | \$ 24.00 | 108 | \$ 64.41 |
| AMA REGULAR HOURS | \$ 50.00 | \$ 60.00 | 129 | \$ 185.66 |
| AMA THRESHER RUN | \$ 24.00 | \$ 28.80 | 643 | \$ 31.85 |
| CANOLA SUBMITTED SAMPLES | \$ 16.00 | \$ 19.20 | 128 | \$ 27.20 |
| COMP PER SMPL AFTER GRADE | \$ 2.75 | \$ 3.30 | 21 | \$ 1.49 |
| COMPOSITE PREP | \$ 1.25 | \$ 1.50 | 0 | \$ - |
| DHV OR HVAC DETERMINATION | \$ 3.00 | \$ 3.60 | 182 | \$ 2.75 |

| | | | | |
|---------------------------|-----------|-----------|---------|-----------|
| EXPORT DOCUMENTATION | \$ 7.50 | \$ 9.00 | 89 | \$ 10.08 |
| FALLING NUMBERS AMA | \$ 18.00 | \$ 21.60 | 484 | \$ 16.67 |
| GERMINATION | \$ 10.00 | \$ 12.00 | 124 | \$ 14.03 |
| LOT INSPECTION LEVEL 1 | \$ 25.00 | \$ 30.00 | 30 | \$ 24.67 |
| MALTING ANALYSIS | \$ 5.00 | \$ 6.00 | 143 | \$ 5.29 |
| MILEAGE FEE | Federal | Federal | Federal | Federal |
| MT PROTEIN | \$ 6.00 | \$ 7.20 | 23 | \$ 5.06 |
| MT SUBMIT GRADE | \$ 10.00 | \$ 12.00 | 64 | \$ 21.63 |
| NEW DIVERTER INSPECTION | \$ 500.00 | \$ 600.00 | 0 | \$ - |
| PER DIEM | Actual | Actual | Actual | Actual |
| POSTAGE/FREIGHT | Actual | Actual | Actual | Actual |
| PROC BUCKWHEAT | \$ 14.00 | \$ 16.80 | 0 | \$ - |
| PROTEIN | \$ 7.50 | \$ 9.00 | 779 | \$ 8.13 |
| RAILCAR SEAL FEE PER SEAL | \$ 2.50 | \$ 3.00 | 121 | \$ 6.89 |
| REGULAR HOURS | \$ 50.00 | \$ 60.00 | 43 | \$ 35.63 |
| SAMPLING FEE - BAG | \$ 50.00 | \$ 60.00 | 68 | \$ 136.00 |
| SAMPLING FEE - BULK | \$ 15.00 | \$ 18.00 | 105 | \$ 17.03 |
| SANITATION INSPECTION | \$ 100.00 | \$ 120.00 | 0 | \$ - |
| SINGLE FACTOR | \$ 7.00 | \$ 8.40 | 29 | \$ 27.37 |
| SPRING WHT SUBMIT SAMPLE | \$ 13.00 | \$ 15.60 | 402 | \$ 10.07 |
| STOWAGE | \$ 8.00 | \$ 9.60 | 1 | \$ 16.00 |
| SUBMITTED SAMPLES | \$ 10.00 | \$ 12.00 | 665 | \$ 10.54 |
| SUPERVISE ELEVATOR SEALS | \$ 4.00 | \$ 4.80 | 0 | \$ - |
| TECHNICAL SERVICES | Varied | Varied | Varied | Varied |
| THRESH BUCKWHEAT | \$ 15.00 | \$ 18.00 | 0 | \$ - |
| VOMITOXIN TEST | \$ 50.00 | \$ 60.00 | 64 | \$ 19.97 |

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, 302 N. Roberts St., Helena, Montana, 59601; telephone (406) 444-5402; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., October 6, 2023.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will significantly and directly impact small businesses.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christy Clark
Christy Clark
Director
Department of Agriculture

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

| | | |
|-------------------------------------|---|-----------------------------|
| In the matter of amendment of ARM |) | NOTICE OF PUBLIC HEARING ON |
| 8.111.501, 8.111.502, 8.111.503, |) | PROPOSED AMENDMENT AND |
| 8.111.505, 8.111.506, 8.111.802, |) | REPEAL |
| 8.111.803, 8.111.804, 8.111.805 and |) | |
| 8.111.806 and the repeal of ARM |) | |
| 8.111.508 through 8.111.510 and |) | |
| 8.111.512 through 8.111.515 |) | |
| pertaining to the Board of Housing |) | |
| Temporary Assistance to Needy |) | |
| Families (TANF) and Coal Trust |) | |
| Multifamily Homes Loan Programs |) | |

TO: All Concerned Persons

1. On September 28, 2023, at 10:00 a.m., the Department of Commerce will hold a public hearing via zoom to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

Video:

https://mt-gov.zoom.us/webinar/register/WN_R8q-00lqQ2axUoObPmzwzQ

2. The Department of Commerce will provide reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., September 26, 2023, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail DOCAAdministrativeRules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

8.111.501 PURPOSE OF REGULATIONS (1) These rules are enacted by the board to provide explanation and guidance for:

(a) loans from the housing Montana fund loan account authorized by 90-6-133(2)(a) and 90-6-134, MCA, pursuant to the criteria and procedures described in ARM 8.111.503 through 8.111.507; ~~and~~

(b) loans from the TANF program of the affordable housing revolving loan account authorized by ~~90-6-133(2)(b)~~, MCA, pursuant to the criteria and procedures described in ~~ARM 8.111.508 through 8.111.515~~.

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA; [Ch. 577, Sec. 1, L. 2023]

REASON: The proposed amendments are necessary to remove the reference to the Temporary Assistance to Needy Families (TANF) loan program. House Bill 244, Ch. 577, Sec. 1, L. 2023, amended 90-6-133, MCA, to remove the statutory authority for the TANF loan program previously implemented by the rule.

8.111.502 DEFINITIONS When used in these rules, unless the context clearly requires a different meaning:

(1) "Application" means the Montana Board of Housing Loan Process published by the board, a copy of which may be obtained by contacting the board by mail at P.O. Box 200528, Helena, Montana 59620-0528, by telephone at (406) 841-2840, or at the board's web site www.housing.mt.gov.

(2) "Board" means the Montana Board of Housing created by 2-15-1814, MCA.

~~(2) "Caretaker relative" means an adult relative of a minor child related by blood, marriage or adoption within the fifth degree of kinship.~~

~~(3) "Federal poverty guidelines" means the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).~~

~~(4) "Housing assistance organization" means any local government, tribal government, local housing authority, nonprofit community or neighborhood based organization, or regional or statewide nonprofit housing assistance organization with experience in providing assistance to low and moderate income households with housing issues.~~

~~(5) "Loan supplement" means the loan supplement to the uniform application published by the board, a copy of which may be obtained by contacting the board by mail at P.O. Box 200528, Helena, Montana 59620-0528, by telephone at (406) 841-2840, or at the board's web site www.housing.mt.gov.~~

~~(6) and (7) remain the same but are renumbered (3) and (4).~~

~~(8) (5) "Rural area" means any area a distance of at least five miles from an incorporated city or town with a population in excess of 15,000 according to the latest estimate published by the United States Census Bureau within the state that is not within the city limits of Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, or Missoula.~~

~~(9) (6) "Small city or town" means an incorporated city or town with a population of less than 15,000 according to the latest estimate published by the United States Census Bureau any city or town within the state that is not within the city limits of Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, or Missoula.~~

~~(10) "TANF allocation" means an allocation extended by the board to a housing assistance organization regarding TANF loans to eligible recipients, and described in ARM 8.111.508 through 8.111.510.~~

~~(11) "TANF loan" means a loan to an eligible recipient by the board from a TANF allocation of a housing assistance organization authorized by 90-6-133(2)(b), MCA, under the temporary assistance for needy families block grant pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq., and described in ARM 8.111.512 through 8.111.515.~~

~~(12) "Uniform application" means the Montana Board of Housing Uniform Application published by the board, a copy of which may be obtained by contacting the board by mail at P.O. Box 200528, Helena, Montana 59620-0528, by telephone at (406) 844-2840, or at the board's web site www.housing.mt.gov.~~

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA; [Ch. 577, Sec. 1, L. 2023]

REASON: The proposed amendments are necessary to remove the definitions in current (2) through (4), (10), and (11), which define terms relating to and used in TANF loan program rules. House Bill 244, Ch. 577, Sec. 1, L. 2023, amended 90-6-133, MCA, and removed the statutory authority for the TANF loan program previously implemented by the rule.

Proposed new (1) and the removal of (5) and (12) are necessary to revise the references to the loan application process and forms used and required by the board for the Housing Montana Fund (HMF) multifamily loan program. The proposed amendments replace references to the uniform loan application and supplement with references to the board's Loan Process which will apply to the board's various multifamily loan programs. The board's Loan Process includes loan application forms, checklist, process descriptions, and fee schedules.

The proposed amendments to current (8) and (9) are necessary to specify the definitions of "rural area" and "small city or town" applicable to HMF loans for preconstruction technical assistance under ARM 8.111.503. For consistency and uniformity, and consistent with 90-6-135, MCA, the board is proposing definitions of these terms consistent with definitions used in the housing credit program.

8.111.503 HMF LOAN ELIGIBLE LOAN ACTIVITIES (1) remains the same.

(2) An HMF loan may not be made that will ~~supplant~~ replace existing or available funding for eligible activities.

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA; [Ch. 577, Sec. 1, L. 2023]

REASON: The proposed amendments are necessary to conform the rule language to the implemented statutory language in 90-6-134(5), MCA, adding "replace" to avoid potential unintended connotations from the word "supplant." The proposed amendment is intended to complement proposed amendments in ARM 8.111.505(2)(b) and 8.111.506(3), implementing the statutory prohibition on using HMF funds to replace existing or available funding.

8.111.505 HMF LOAN APPLICATION PROCEDURES (1) remains the same.

(2) At the time the application is submitted, an applicant must also submit:

(a) remains the same.

(b) an explanation of how the loan will not ~~supplant~~ replace existing or available funding for the project, including a detailed description of the public benefit obtained from program funding, including construction phase funding, if applicable, compared to funding from other existing and available funding sources with substantially similar terms and conditions; and

(c) a description of the priority the lien of the board will have in relationship with the liens of other lenders on the project; ~~and,~~

~~(d) a fee of 1 percent of the requested loan amount.~~

~~(3) Applications will be reviewed by staff designated by the board and presented to the board for consideration as soon as the review is completed, but not later than 90 days following receipt of a complete application by the board.~~

(4) ~~(3)~~ Applications that are substantially incomplete ~~shall~~ will not be processed but will be returned to the applicant.

(4) Applicants must demonstrate project development progress through submission of quarterly progress reports from the time of preliminary loan application approval through loan closing. Quarterly progress reports must be submitted in accordance with the requirements of and using the quarterly report form for the Housing Credit program. Copies of the housing credit quarterly report form and requirements may be obtained by contacting the board by mail at P.O. Box 200528, Helena, Montana 59620-0528, by telephone at (406) 841-2840, or at the board's web site www.housing.mt.gov.

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA

REASON: The proposed amendments to (1), (2)(d), and (3) are necessary to revise the references to the loan application process and forms used and required by the board for the Housing Montana Fund (HMF) multifamily loan program. In addition, the amendments are necessary to remove fee and review process provisions that are addressed in the board's Loan Process referenced in ARM 8.111.502, which will apply to the board's various multifamily loan programs and includes loan application forms, checklist, process descriptions, and fee schedules.

The proposed amendments in (2)(b) are necessary to conform the rule language to the implemented statutory language in 90-6-134(5), MCA, adding "replace" to avoid potential unintended connotations from the word "supplant." In addition, these proposed amendments are necessary to require that applicants submit application information sufficient to allow MBOH to ensure compliance with the prohibition on replacement of existing or available funding sources.

Proposed new (4) is necessary to establish project progress and progress reporting requirements to ensure that projects receiving preliminary loan application approval and corresponding reservations of available HMF loan funds are pursued diligently

to loan closing. These requirements are also necessary to prevent submission of applications that would tie up loan fund reservations for projects that are not being pursued or completed diligently.

8.111.506 HMF LOAN TERMS AND CONDITIONS (1) An HMF loan shall:

(a) remains the same.

(b) have an amortization period not to exceed 40 years and a term not to exceed 30 years, both as approved by the board based upon the loan amount, additional project funding sources and obligations, and other relevant factors;

(c) through (e) remain the same.

(2) As a condition of the loan, the project owner must commit to income targeting and maximum rent requirements and restrictions and related transfer, compliance, and enforcement restrictions, through execution and recording of a regulatory agreement establishing such provisions as covenants running with the project property for the longer of thirty years or the duration of the loan obligation. The board may waive such requirement if the project is subject to a substantially similar agreement in favor of the board under the Housing Credit or another board loan program.

(3) The board may approve HMF loans:

(a) to provide permanent financing, with loan closing and disbursement occurring after completion of construction and three months of stabilized occupancy; or

(b) on a case-by-case basis, to provide financing prior to completion of construction, where the applicant demonstrates and the board finds additional public benefit from such financing compared to funding from other existing and available funding sources with substantially similar terms and conditions, such as but not limited to allowing project financial feasibility or providing for an increased number of affordable housing units. As a condition of approving such pre-construction financing, the board may require additional security, risk management measures, and other loan terms, including but not limited to additional collateral and third-party construction and disbursement monitoring obtained or provided and paid for by the borrower, investor, or other lender.

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA; [Ch. 577, Sec. 1, L. 2023]

REASON: The proposed amendments to (1)(b) are necessary to specify the maximum loan amortization period applicable to setting loan repayment terms. The maximum 40-year amortization is long enough to allow flexibility in structuring project financing to facilitate project feasibility while still requiring sufficient payment levels to return program funds to the board for use in supporting other housing developments. The proposed rule establishes maximum loan amortization and payment periods, but the specific periods will be determined by the board for each loan based on the loan amount, additional project funding sources and obligations, and other relevant factors.

Proposed new (2) is necessary to require restrictive covenants that ensure projects funded with HMF loans meet long term affordability requirements and therefore continue to benefit low- and moderate-income residents for a substantial period of years.

Proposed new (3) is necessary to specify under what conditions HMF loans will be made for financing, including loan closing and disbursement, prior to completion of construction. These provisions are necessary to ensure that HMF funds are not used to replace other existing or available funding sources.

8.111.802 DEFINITIONS When used in these rules, unless the context clearly requires a different meaning:

(1) "Application" means the Montana Board of Housing ~~Uniform Application, Loan Supplement, or any more current application forms published by the board~~ Loan Process published by the board, a copy of which may be obtained by contacting the board by mail at P.O. Box 200528, Helena, Montana 59620-0528, by telephone at (406) 841-2840, or at the board's web site www.housing.mt.gov.

(2) through (7) remain the same.

AUTH: 90-6-136, MCA; [Ch. 774, Sections 16 and 17, L. 2023]

IMP: 17-6-308, 90-6-137, MCA

REASON: The proposed amendments are necessary to revise the references to the loan application process and forms used and required by the board for the Coal Trust Multifamily Homes (CTMH) multifamily loan program. The proposed amendments replace references to the uniform loan application and supplement with references to the board's loan process, which will apply to the board's various multifamily loan programs. The board's loan process includes loan application forms, checklist, process descriptions, and fee schedules.

8.111.803 CTMH LOAN ELIGIBLE LOAN ACTIVITIES (1) The board may make a CTMH loan ~~to meet the basic housing needs of for the development and preservation of multifamily rental housing projects that provide housing for low-income or moderate-income households and for the following purposes:~~

(a) development and construction of multifamily rental housing projects;
(b) acquisition and/or rehabilitation of existing multifamily rental housing projects for the purpose of preservation of or conversion to housing for low-income or moderate-income households; ~~or~~

(c) acquisition of land for multifamily rental housing projects including land trusts and for mobile or manufactured homes;

(d) development or preservation of mobile home parks as defined in 70-33-103, MCA; or

(e) other purposes authorized in 90-6-137, MCA, which the board determines are consistent with CTMH loan program objectives, requirements, and which provide sufficient assurances of repayment of coal trust funds.

(2) A CTMH loan may not be used to replace existing or available sources of funding for eligible loan activities.

(3) Property Projects funded with a CTMH loan is must be subject to property taxes, except those projects located on tribal lands.

AUTH: 90-6-136, MCA

IMP: 17-6-308, 90-6-137, MCA [as amended by Ch. 774, Sections 16 and 17, L. 2023]

REASON: The proposed amendments are necessary to implement changes to the CTMH program enacted by the 2023 Legislature in House Bill 819, Ch. 774, Section 17, L. 2023. Proposed new (1)(d) is necessary to implement new statutory language enacted in HB 819 authorizing CTMH loans for the development or preservation of mobile home parks as defined in 70-33-103, MCA. The proposed amendments to current (3) are necessary to implement HB 819's new statutory language exempting projects located on tribal lands from the requirement to pay property taxes, and which amends 90-6-137(3)(v), MCA. The other amendments are necessary to conform the rule to the authorized loan purposes and requirements specified in 90-6-134 and 90-6-137, MCA.

8.111.804 CTMH LOAN APPLICANT ELIGIBILITY (1) remains the same.

~~(2) The applicant must document to the satisfaction of the board experience in the development or management of housing for low-income or moderate-income households. Criteria considered by the board include, but are not limited to:~~

- ~~(a) number of years' experience in development or management of housing for low-income and/or moderate-income households;~~
- ~~(b) number of housing developments and units developed or managed;~~
- ~~(c) involvement in other low-income and moderate-income housing programs of the board, federal agencies, and tribal and local governments; and~~
- ~~(d) successful completion of other housing development projects.~~

AUTH: 90-6-136, MCA

IMP: 17-6-308, 90-6-137, MCA; [Ch. 774, Sections 16 and 17, L. 2023]

REASON: The proposed amendments are necessary to remove the language of (2), which is similar to language in current ARM 8.111.807 and is therefore unnecessary.

8.111.805 CTMH LOAN APPLICATION PROCEDURES (1) remains the same.

(2) At the time the application is submitted, an applicant must also submit:

- (a) remains the same.
- (b) an explanation of how the loan will not supplant replace existing or available funding for the project, including a detailed description of the public benefit obtained from program funding, including construction phase funding, if applicable, compared to funding from other existing and available funding sources with substantially similar terms and conditions; and
- (c) a maximum fee of 1% of the requested loan amount, which may be adjusted based on project details by board staff for mobile home park projects, documentation of lot rents for comparable mobile home parks in the market area and

an explanation demonstrating that proposed lot rents will be reasonable and affordable for prospective residents.

~~(3) Applications will be reviewed by staff designated by the board and presented to the board for consideration as soon as the review is completed, but not later than 90 days following receipt of a complete application by the board.~~

(4) Applications that are substantially incomplete as determined by the board staff ~~shall~~ will not be processed but will be returned to the applicant.

(4) Applicants must demonstrate project development progress through submission of quarterly progress reports from the time of preliminary loan application approval through loan closing. Quarterly progress reports must be submitted in accordance with the requirements of and using the quarterly report form for the Housing Credit program. Copies of the housing credit quarterly report form and requirements may be obtained by contacting the board by mail at P.O. Box 200528, Helena, Montana 59620-0528, by telephone at (406) 841-2840, or at the board's web site www.housing.mt.gov.

AUTH: 90-6-136, MCA

IMP: 17-6-308, 90-6-137, MCA; [Ch. 774, Sections 16 and 17, L. 2023]

REASON: The proposed amendments in (2)(b) are necessary to conform the rule language to the implemented statutory language in 90-6-134(5), MCA, adding "replace" to avoid potential unintended connotations from the word "supplant." In addition, these proposed amendments are necessary to require that applicants submit application information sufficient to allow MBOH to ensure compliance with the prohibition on replacement of existing or available funding sources.

The amendments to (2)(c) are necessary to implement the language of HB 819 authorizing CTMH loans for the development or preservation of mobile home parks as defined in 70-33-103, MCA. The proposed rule specifies application requirements applicable to mobile home park loan applications and lot rents. The proposed rule requires that a mobile home park loan applicant submit information showing rent levels charged in comparable mobile home parks in the market area and an explanation demonstrating that proposed lot rents are reasonable and affordable for prospective tenants. The board will use this information, together with other information available to the board, to determine maximum lot rents applicable to project tenants in accordance with proposed ARM 8.111.806.

The proposed amendments in (2)(c) and (3) are necessary to remove fee and process provisions that are addressed in the board's Loan Process referenced in ARM 8.111.502. Through the "application" definition in ARM 8.111.802, the proposed amendments replace references to the uniform loan application and supplement with references to the board's loan process, which will apply to the board's various multifamily loan programs and includes loan application forms, checklist, process descriptions, and fee schedules.

Proposed new (4) is necessary to establish project progress and progress reporting requirements to ensure that projects receiving preliminary loan application approval

and corresponding reservations of available Coal Trust loan funds are pursued diligently to loan closing. These requirements are also necessary to prevent submission of applications that would tie up loan fund reservations for projects that are not being pursued or completed diligently.

8.111.806 CTMH LOAN TERMS AND CONDITIONS (1) A CTMH loan shall:

- (a) remains the same.
- (b) have an amortization period not to exceed 40 years and a term not to exceed 30 years, both as approved by the board based upon the loan amount, additional project funding sources and obligations, and other relevant factors;
- (c) ~~bear interest at an annual rate of at least 0.5% less than the interest rate charged for a loan funded by the Housing Montana Fund as outlined in ARM 8.111.506;~~
- (d) be subject to a late charge of 4% of the monthly payment due for each monthly payment that is not made within 15 days of its due date;
- (e) (d) be secured by a first priority lien (perfected either by a mortgage or a trust indenture) against on the real project property benefited by the loan; and
- (f) ~~(e) be in first lien position, will not exceed 95% of total development cost, and may be a loan participation or pari passu loan as long as it minimizes the risk of the CTMH program.~~

(2) The board and the CTMH loan recipient must each pay half of the loan servicing fees as determined by the board.

(3) A CTMH loan shall bear interest at an annual rate equal to .0625% plus the Average Coal Trust Investment Performance rate effective as of preliminary loan application submission, or at the Average Coal Trust Investment Performance rate effective within 30 days before loan closing, if such later effective rate is at least 1/8 of a percent lower than the rate effective at preliminary loan application submission. For purposes of this rule, the Average Coal Trust Investment Performance rate is such rate determined by the Board of Investments and posted on its website at <https://investmentmt.com/shared/LoanPrograms/Rates/In-State-Rate-Sheet-MCHP.pdf>.

(4) At least 75% of the project units or lots must be targeted to residents at or below 95% of area median income.

(5) Maximum rents must apply to project units or lots.

(a) For projects consisting of mobile home parks, land trusts, or land for mobile or manufactured homes, maximum rents must be reasonable and affordable to prospective residents, as determined by the board based upon the documentation and explanation submitted by the applicant and other relevant information obtained by the board.

(b) For other projects, maximum rents will be calculated according to income targeting standards applicable to the Housing Credit program. Copies of the income targeting standards for the Housing Credit program may be obtained by contacting the board by mail at P.O. Box 200528, Helena, Montana 59620-0528, by telephone at (406) 841-2840, or at the board's web site www.housing.mt.gov.

(c) As a condition of the loan, the project owner must commit to the income targeting and maximum rent requirements and restrictions in accordance with (3)

and (4), and related transfer, compliance and enforcement restrictions, through execution and recording of a regulatory agreement establishing such provisions as covenants running with the project property for the longer of thirty years or the duration of the loan obligation. The board may waive such requirement if the project is subject to a substantially similar agreement in favor of the board under the Housing Credit or another board loan program.

(6) The board may approve CTMH loans:

(a) to provide permanent financing, with loan closing and disbursement occurring after completion of construction and three months of stabilized occupancy; or

(b) on a case-by-case basis, to provide financing prior to completion of construction, where the applicant demonstrates and the board finds additional public benefit from such financing compared to funding from other existing and available funding sources with substantially similar terms and conditions, such as but not limited to allowing project financial feasibility or providing for an increased number of affordable housing units. As a condition of approving such pre-construction financing, the board may require additional security, risk management measures, and other loan terms, including but not limited to additional collateral and third-party construction and disbursement monitoring obtained or provided and paid for by the borrower, investor, or other lender.

AUTH: 90-6-136, MCA

IMP: 17-6-308, 90-6-137, MCA; [Ch. 774, Sections 16 and 17, L. 2023]

REASON: The proposed amendments to (1)(b) are necessary to specify the maximum loan amortization period applicable to setting loan repayment terms. The maximum 40-year amortization is long enough to allow flexibility in structuring project financing to facilitate project feasibility while still requiring sufficient payment levels to return program funds to the board for use in supporting other housing developments. The proposed rule establishes maximum loan amortization and payment periods, but the specific periods will be determined by the board for each loan based on the loan amount, additional project funding sources and obligations, and other relevant factors.

Proposed (4) and (5) are necessary to specify income targeting and rent restriction requirements for projects receiving CTMH loans and to require restrictive covenants that ensure projects funded with HMF loans meet such affordability requirements on a long-term basis. These requirements are necessary to ensure that CTMH-funded projects continue to benefit low- and moderate-income residents for a substantial period of years.

The proposed amendments to (1)(c) and new (3) are necessary to implement the statutory changes in the required CTMH interest rate enacted in HB 819. HB 819 revised the CTMH interest rate requirements to tie interest rates to coal trust fund investment performance rather than to HMF loan program rates. HB 819 sets a minimum interest rate for individual loans and a minimum average rate for all loans combined.

The board proposes to set loan interest rates at the sum of .06215% and the Average Coal Trust Investment Performance rate determined and published by the Board of Investments and effective as of preliminary loan application submission or, if at least 1/8 of a percent lower, the Average Coal Trust Investment Performance rate effective within 30 days of loan closing. Setting this component of the interest rate at – rather than 0.5% below - the Average Coal Trust Investment Performance rate ensures that loan interest rates will meet the minimum average rate for all loans combined.

The additional .0625% interest above the Average Coal Trust Investment Performance rate is necessary to implement the requirement in 90-6-137(3)(b)(iv), MCA, that the loan recipient pay half of loan servicing fees. The Board of Housing servicing fee is .125% of the loan amount. Section 90-6-137(2), MCA authorizes the Board of Housing to use interest received on a loan to pay its one-half share of servicing fees and for reasonable costs of program administration. The board's share of servicing fees and administrative expenses are deducted from interest received and the balance of interest received is returned to the coal tax trust fund.

The proposed amendments to current (1)(f) are necessary to remove provisions allowing CTMH loans to be in the form of a loan participation or to share first priority lien status with another loan. These provisions have not been applied and are unnecessary for the administration of the loan program.

Proposed new (6) is necessary to specify under what conditions CTMH loans will be made for financing, including loan closing and disbursement, prior to completion of construction. These provisions are necessary to ensure that CTMH funds are not used to replace other existing or available funding sources.

4. The following rules are proposed to be repealed:

8.111.508 TANF ALLOCATION ELIGIBLE PURPOSES

AUTH: 90-6-136, MCA
IMP: 90-6-134, MCA

REASON: The repeal of ARM 8.111.508 is necessary because House Bill 244, Ch. 577, L. 2023, removed the statutory authority in 90-6-133, MCA, for the TANF loan program previously implemented by the rule.

8.111.509 TANF ALLOCATION ELIGIBILITY

AUTH: 90-6-136, MCA
IMP: 90-6-134, MCA

REASON: The repeal of ARM 8.111.509 is necessary because House Bill 244, Ch. 577, L. 2023, removed the statutory authority in 90-6-133, MCA, for the TANF loan program previously implemented by the rule.

8.111.510 TANF ALLOCATION APPLICATION PROCEDURE

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA

REASON: The repeal of ARM 8.111.510 is necessary because House Bill 244, Ch. 577, L. 2023, removed the statutory authority in 90-6-133, MCA, for the TANF loan program previously implemented by the rule.

8.111.512 TANF LOAN ELIGIBILITY

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA

REASON: The repeal of ARM 8.111.512 is necessary because House Bill 244, Ch. 577, L. 2023, removed the statutory authority in 90-6-133, MCA, for the TANF loan program previously implemented by the rule.

8.111.513 TANF LOAN TERMS AND CONDITIONS

AUTH: 90-6-136, MCA

IMP: 90-6-133, 90-6-134, MCA

REASON: The repeal of ARM 8.111.513 is necessary because House Bill 244, Ch. 577, L. 2023, removed the statutory authority in 90-6-133, MCA, for the TANF loan program previously implemented by the rule.

8.111.514 TANF LOAN APPLICATION PROCEDURES

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA

REASON: The repeal of ARM 8.111.514 is necessary because House Bill 244, Ch. 577, L. 2023, removed the statutory authority in 90-6-133, MCA, for the TANF loan program previously implemented by the rule.

8.111.515 RESPONSIBILITIES OF TANF LOAN HOUSING ASSISTANCE ORGANIZATION

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA

REASON: The repeal of ARM 8.111.515 is necessary because House Bill 244, Ch. 577, L. 2023, removed the statutory authority in 90-6-133, MCA, for the TANF loan program previously implemented by the rule.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bonnie Martello, Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0533; telephone (406) 841-2596; fax (406) 841-2871; TDD (406) 841-2702; or e-mail DOCAAdministrativeRules@mt.gov, and must be received no later than 5:00 p.m., October 6, 2023.

6. Bonnie Martello, paralegal, Department of Commerce, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors, Representative Dave Fern and Representative Paul Green, were contacted on August 29, 2023, by e-mail at dave.fern@legmt.gov and at paul.green@legmt.gov.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Amy Barnes
AMY BARNES
Rule Reviewer

/s/ Mandy Rambo
MANDY RAMBO
Deputy Director
Department of Commerce

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rule I pertaining to the administration)
of the Emergency Shelter Facility)
Grant (ESFG) Program)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION

TO: All Concerned Persons

1. On September 28, 2023, at 11:00 a.m., the Department of Commerce will hold a public hearing via zoom to consider the proposed adoption of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

Video:

https://mt.gov.zoom.us/webinar/register/WN_CzW0n13XTfSgscwRos9E2g

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., September 26, 2023, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail DOCAAdministrativeRules@mt.gov.

3. The rule proposed to be adopted provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE EMERGENCY SHELTER FACILITY GRANT (ESFG) PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Application Guidelines for the Emergency Shelter Facility Grant (ESFG) Program.

(2) The rules incorporated by reference in (1) relate to the scope, standards, and procedures for eligibility, application, award, administration, compliance monitoring, and related requirements for grants to nonprofit corporations that provide emergency shelter for the homeless.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Montana Housing Division, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528, or on the web site at <https://housing.mt.gov/>.

AUTH: [Ch. 763, Section 17, L. 2023]

IMP: [Ch. 763, Sections 17 through 24, L. 2023]

REASON: The proposed rule is necessary to implement and administer the Emergency Shelter Facility Grant (ESFG) program as required by HB 5 of the 2023 Legislative session.

HB 5 authorized the Department of Commerce to award up to \$5 million in grants to domestic nonprofit corporations to fund acquisition, construction, and capital improvements of emergency shelter facilities for homeless individuals and families. HB 5 requires that interested nonprofit corporations submit grant proposals to the department. HB 5 further provides that disbursement of grant funds is subject to certain conditions and that grant awards must be prioritized based upon the extent to which applicants satisfy such conditions. HB 5 also established certain matching fund requirements and imposed a cap on the amount of funding that may be allocated to entities within any individual county.

The department proposes the adoption of New Rule I, adopting and incorporating by reference the Emergency Shelter Facility Grant (ESFG) Program (Guidelines). The proposed Guidelines and other relevant information and resources are available for review at HOME-ARP and ESFG on the department's website at housing.mt.gov. Interested persons may comment on the Guidelines in accordance with this notice.

Adoption of the Guidelines is necessary to provide detailed information and definitions regarding application submission and content and application scoring and award criteria. The Guidelines are necessary to specify project requirements, including activities and expenses eligible for grant funding; building and design standards; capital needs assessment and cost estimates for rehabilitation/capital improvements exceeding \$500,000; compliance standards, including Fair Housing Act standards and National Standards for the Physical Inspection of Real Estate (NSPIRE); a minimum period for which the property must remain in use as an emergency shelter in compliance with program requirements; and other related requirements. Except where inconsistent with HB 5, for purposes of uniformity and administrative efficiency, the department proposes adoption of processes, requirements, and standards already used in other department grant and loan programs.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bonnie Martello, Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0533; telephone (406) 841-2596; fax (406) 841-2871; TDD (406) 841-2702; or e-mail DOCAdministrativeRules@mt.gov, and must be received no later than 5:00 p.m., October 6, 2023.

5. Bonnie Martello, paralegal, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Mike Hopkins, was contacted on August 29, 2023, by e-mail at mike.hopkins@mtleg.gov and at mikeformontana@gmail.com.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State August 29, 2023.

BEFORE THE FISH AND WILDLIFE COMMISSION, THE STATE PARKS AND
RECREATION BOARD, AND THE DEPARTMENT OF FISH, WILDLIFE AND
PARKS OF THE STATE OF MONTANA

| | | |
|---------------------------------------|---|-----------------------------|
| In the matter of the adoption of New |) | NOTICE OF PUBLIC HEARING ON |
| Rules I through XXIV and the repeal |) | PROPOSED ADOPTION AND |
| of ARM 12.8.201, 12.8.202, 12.8.203, |) | REPEAL |
| 12.8.204, 12.8.205, 12.8.206, |) | |
| 12.8.207, 12.8.208, 12.8.209, |) | |
| 12.8.210, 12.8.212, 12.8.213, |) | |
| 12.8.217, 12.8.218, 12.8.219, |) | |
| 12.8.801, 12.8.802, 12.8.803, |) | |
| 12.8.804, 12.8.805, 12.8.806, |) | |
| 12.8.807, 12.8.808, 12.8.809, |) | |
| 12.8.810, 12.8.811, 12.8.812, |) | |
| 12.8.813, 12.8.814, 12.8.815, |) | |
| 12.8.816, 12.8.817, 12.8.818, |) | |
| 12.8.819, 12.8.820, 12.8.821, |) | |
| 12.8.822, 12.8.823 and 12.8.824; |) | |
| pertaining to the public use rules of |) | |
| Fish, Wildlife and Parks public lands |) | |

TO: All Concerned Persons

1. On October 2, 2023, at 10:00 a.m., the Department of Fish, Wildlife and Parks, the State Parks and Recreation Board, and the Fish and Wildlife Commission will hold a public hearing via the ZOOM meeting platform to consider the proposed adoption and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the telephonic public hearing in the following way:

Dial by telephone: +1 646 558 8656
Meeting ID: 898 5557 5756
Passcode: 496060

2. The department, board, and commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Fish, Wildlife and Parks (FWP) no later than 5:00 p.m., on September 22, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. General Statement of Reasonable Necessity. The Department of Fish, Wildlife and Parks, the State Parks and Recreation Board, and the Fish and Wildlife Commission have statutory authority to establish rules governing the use of public lands held in custody for public use as enacted by the Legislature. Together the

department, commission, and board are proposing consolidated public use rules for all department lands (e.g., state parks, fishing access sites, wildlife management areas, wildlife habitat protection areas, and fisheries conservation areas). Currently three different sets of public use rules are in place depending on site type. The purpose of the proposed consolidated rules is to provide for consistent management of public uses across all lands while maintaining the purpose of different site types, protecting fish, wildlife, habitat, cultural, and recreational resources, as well as improving customer service and understanding of expectations for public use.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I (12.12.101) GENERAL POLICY (1) The following regulations shall govern the use of all lands under the control, administration, and jurisdiction of the Department of Fish, Wildlife and Parks.

(2) Regulations governing each specific area will be posted by the department on site and available on the FWP website and at FWP regional offices

(3) Lands controlled or administered by the department may be used for recreation or other purposes as set forth in these or other applicable rules or as otherwise provided by law.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.201 proposed to be repealed in this notice.

NEW RULE II (12.12.102) DEFINITIONS (1) "Board" means the State Parks and Recreation Board established in 2-15-3406, MCA.

(2) "Camping" means to occupy a camping unit for temporary residence or sleeping purposes.

(3) "Camping facility" means a lodging structure for overnight sleeping purposes such as cabins, tipis, or yurts.

(4) "Camping party" means any individual or group occupying a campsite.

(5) "Camping unit" means one sleeping device or shelter, a tent, motorhome, camping bus, truck-mounted camping shell, pull-type camper, or other device designed and commonly used for sleeping.

(6) "Campsite" means any area officially authorized to allow camping including designated, numbered, and dispersed camping sites.

(7) "Commission" means the Fish and Wildlife Commission established in 2-15-3402, MCA.

(8) "Day use" means the hours of the half hour before official sunrise to the half hour after official sunset.

(9) "Department" means the Department of Fish, Wildlife, and Parks.

(10) "Developed area" means all or a part of a public use site that includes human-made features that are designed to facilitate recreational activities. These features include parking areas, bathroom facilities, designated camping spaces,

picnic facilities, established roads and trails, planted and maintained lawn or grass areas, boat launch facilities, dock facilities, interpretive facilities, and other improvements.

(11) "Director" means the director of the Department of Fish, Wildlife, and Parks.

(12) "Dispersed camping" means camping that occurs in areas that are not highly developed or individually signed and/or numbered.

(13) "Domestic animals" means dogs, cats, or other animals commonly owned as pets.

(14) "Livestock" means horses, cattle, sheep, goats, llamas, donkeys, and other animals commonly used for riding, packing, or agricultural purposes.

(15) "Motorized vehicle" means a "motor vehicle" as defined in 61-1-101, MCA, and includes motorcycles, snowmobiles, off-highway vehicles, trailers, and motorhomes.

(16) "Non-Motorized vehicle" means any wheeled or tracked device not considered a motorized vehicle.

(17) "Occupancy" means the predetermined maximum number of camping units and/or individuals that may occupy a campsite or camping facility based on size, location, and other site attributes.

(18) "Occupy" means the use of a campsite or camping facility for the purposes of camping, by a person or party who has paid the camping fee within the applicable time limits or when it has been reserved through the appropriate procedures of the reservation system.

(19) "Primary occupant" means the person that a campsite or camping facility is registered to and who must be an occupant.

(20) "Public use sites" means fishing access sites, wildlife management areas, wildlife habitat protection areas, state parks, state parks-affiliated lands, fisheries conservation areas, or any other lands managed by the department for public use.

(21) "Special use permit" means a permit used to authorize special events, noncommercial activities, organized groups, and other special uses occurring at public use sites.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.801 and 12.8.803 proposed to be repealed in this notice. The definition rule is expanded so that repetition of definitions within each individual rule could be avoided, and for consistency of terminology throughout the rules.

NEW RULE III (ARM 12.12.103) RULES POSTED BY THE DEPARTMENT

(1) The department will post site-specific rules for a public use site on location, online, and at FWP regional offices.

(2) While in a public use site it is prohibited to fail to comply with the rules set out in this chapter, or site-specific rules posted by the department.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate a portion of ARM 12.8.209.

NEW RULE IV (ARM 12.12.104) PROHIBITED CONDUCT (1) The following conduct is prohibited in public use sites:

- (a) arguing with, threatening, harassing, or intimidating another visitor or otherwise interfering with the lawful use by another;
 - (b) threatening, resisting, intimidating, arguing with, or intentionally interfering with any official, employee, or agent of the department engaged in the performance of his or her official duties or on account of the performance of his or her official duties;
 - (c) failing to comply with a lawful order issued by a department official, employee, or agent acting pursuant to these rules or law;
 - (d) creating a safety hazard;
 - (e) operating sound-emitting electronic devices, such as speakers, radios, televisions, or other equipment at a volume which projects sound beyond the person's immediate vicinity in a manner that disturbs others; or
 - (f) operating generators where prohibited or during public use site quiet hours between 10:00 p.m. and 7:00 a.m.
- (2) In addition to any other penalty posted by the department, individuals violating this rule may be expelled immediately from the public use site.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.208, 12.8.821, and 12.8.222 proposed to be repealed in this notice.

NEW RULE V (ARM 12.12.105) FEE COMPLIANCE AND CLOSURE (1) If in effect, fee requirements for public use sites shall be posted by the department on site.

(2) Regulations relating to establishment of fees for recreational use of lands owned and controlled by the state of Montana, acting by and through the commission or department will not be considered or processed as subject to the Montana Administrative Procedure Act.

(3) While in a public use site it is prohibited to:

(a) fail to pay any required day use, camping, group use, or any other required fee; or

(b) enter or remain in a public use site when closed.

(4) Wildlife management areas specifically managed as big game winter range, or portions of, are closed to all public entry from December 1 at 11:59 p.m.

through May 15 at noon each year unless otherwise approved by the commission and posted by the department.

(5) Wildlife management areas not managed specifically for big game winter range are open for public entry year-round unless otherwise posted by the department.

(6) The department may make special regulations for limited entry to closed wildlife management areas access roads or parking areas before noon on May 15 for the purpose of managing vehicles, parking, public safety, and resource impacts. The regulations shall be posted by the department where in effect.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.209, 12.8.213, and 12.8.820 proposed to be repealed in this notice.

NEW RULE VI (ARM 12.12.106) PROPERTY DISTURBANCE (1) While in a public use site it is prohibited to:

(a) damage, deface, destroy, or possess any natural features, developed features, or vegetation;

(b) damage, deface, destroy, possess, or permit the disturbance or removal of topsoil or subsoil, nonfossilized and fossilized paleontological specimens, cultural or archeological resources, or the parts thereof;

(c) gather or cut firewood for offsite use, except where otherwise authorized by the department;

(d) design, construct, place, or occupy any structure, such as development or placement of unauthorized roads, trails, signs, and landscape features;

(e) place or leave a geocache or other object without written permission from the department; or

(f) use a mineral or metal detector, magnetometer, or other metal detecting device at public use sites without written permission from the department.

(2) Unauthorized structures are subject to removal or impoundment.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.207, 12.8.802, and 12.8.817 proposed to be repealed in this notice.

NEW RULE VII (ARM 12.12.107) DESIGNATED AND DISPERSED CAMPING SITES (1) Unless otherwise posted by the department, within a public use site it is prohibited to:

(a) camp in any area, except those specifically designated or marked for that purpose;

- (b) camp, leave camping equipment, or otherwise attempt to occupy a campsite that is reserved or occupied by another person or group;
 - (c) leave a camping unit or other vehicle, equipment, or personal items in a campsite overnight without a person present;
 - (d) camp at one or more campsites in a public use area for a period of longer than 7 nights during any consecutive 30-day period, beginning with the first night occupied unless otherwise posted by the department;
 - (e) exceed the designated occupancy limit of a campsite;
 - (f) fail to comply with the terms of a special use permit;
 - (g) fail to vacate a campsite by the posted check out time; or
 - (h) travel more than 50 yards with a motorized vehicle from a designated road in areas designated for dispersed camping.
- (2) Campsites shall be vacated by 1:00 p.m. on the day of departure.
 - (3) Camping facilities shall be vacated by 12:00 p.m. on the day of departure.
 - (4) Boat-in campsites shall be solely for the use of the individuals traveling by watercraft as their primary mode of transportation to the site.
 - (5) The maximum limit for a single occupancy campsite shall be eight people, one camping unit, and two additional tents unless otherwise authorized by the department.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.205 and 12.8.803 proposed to be repealed in this notice.

NEW RULE VIII (ARM 12.12.108) FIRES AND FIREWORKS (1) Unless otherwise posted by the department in a public use site it is prohibited to:

- (a) light or maintain a fire at state parks or fishing access sites except in a designated fire ring;
 - (b) light or maintain a fire outside of a designated fire ring in a public use site where it is posted by the department that fires are limited to fire rings;
 - (c) violate an authorized county or state fire restriction order;
 - (d) light or maintain a fire or burning materials, that causes damage or threatens to cause damage to property or recreation site resources, creates litter, or otherwise creates a public safety hazard;
 - (e) cause damage to property or resources, or otherwise create a public safety hazard;
 - (f) depart a campsite or day use area without completely extinguishing a fire; or
 - (g) light or discharge any fireworks, rockets, or other type of explosives including exploding targets.
- (2) Smoking in a public use site is allowed in outdoor areas unless posted by the department.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.202, 12.8.206, 12.8.805, and 12.8.819 proposed to be repealed in this notice.

NEW RULE IX (ARM 12.12.109) FOOD STORAGE (1) In public use sites where food storage rules apply and are posted by the department, it is prohibited to fail to comply with the food storage rules. The following acts are prohibited annually from March 1 to December 1 on all public use sites where food storage rules apply:

(a) Possessing or storing any food for human or animal consumption, refuse, or items that may have remnants or smell like food or refuse (including personal hygiene products, beverages, unburned food or garbage residue from fire pits or stoves, or empty food or beverage containers but excluding water or water containers, hay, or hay cubes without additives), unless these items are:

(i) attended by a person who is awake, alert, and within one hundred feet and line-of-sight of the items;

(ii) suspended at least ten feet off the ground and at least four feet from any supporting tree or pole;

(iii) stored in a container or using a method listed in the most current Interagency Grizzly Bear Committee Certified Bear-Resistant Products list or that has been approved under the IGBC's courtesy inspection program (non-commercial products made for personal use may be inspected and approved under that program). This includes electric fences that are installed properly and meet the design and minimum electrical output specifications on that list, and are tested for proper operation at least every twenty-four hours with a voltmeter; or

(iv) stored in a closed vehicle, trailer, building, or facility constructed of solid, non-pliable material that, when secured, has no openings, hinges, lids, or coverings that would allow a bear to gain entry by breaking, bending, tearing, biting, or pulling with its claws (any windows must be closed). Horse or livestock trailers may not have any openings greater than ten inches in two dimensions, and food, refuse, or animal carcasses must be stored more than three feet from any opening.

(b) Possessing or storing any bird, fish, or other animal carcass or parts thereof (including livestock carcasses) that have not been prepared for human or animal consumption, unless these items are:

(i) being field dressed, transported, or prepared for eating;

(ii) stored in accordance with department-approved storage methods and at least one hundred yards from any known occupied camping area; or

(iii) possessed more than one quarter mile (straight-line distance) from any known occupied camping area and more than two hundred yards from any established trail or road.

(c) Camping within one hundred yards of any known bird, fish, or other animal carcass or parts thereof (including livestock carcasses) stored in accordance with Fish, Wildlife and Parks-approved storage methods; or one quarter mile of any known bird, fish, or other animal carcass or parts thereof (including livestock carcasses) not stored in accordance with Fish, Wildlife and Parks-approved storage methods.

- (2) The following persons are exempt from this rule:
- (a) persons with special authorization from the department that specifically exempts them from the effect of this rule; and
 - (b) any federal, state, or tribal employee placing baits for research or management purposes as part of their official duties.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.806 proposed to be repealed in this notice. This rule also incorporates food storage regulations required for nearby Forest Service land use.

NEW RULE X (ARM 12.12.110) SANITATION AND WASTE DISPOSAL

- (1) Unless otherwise posted by the department in a public use site it is prohibited to:
- (a) deposit household or commercial garbage or trash at a public use site brought in from another property;
 - (b) dispose or dump sewage or wastewater from trailers, campers, boats, or portable toilets anywhere except in designated facilities;
 - (c) dispose of refuse or fish remains in a latrine or other bathroom facilities;
 - (d) dispose of human bodily waste in developed areas, except at a designated restroom, latrine, or other facility intended for such purpose;
 - (e) in undeveloped areas, dispose of human bodily waste within 100 feet of a water source, campsite, or trail unless otherwise posted by the department;
 - (f) where required, dispose of human waste or toilet paper anywhere but in a department-approved human waste carry-out system; or
 - (g) dispose or burn trash in fire rings such as aluminum cans, glass bottles, steel cans, diapers, and all other trash.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.210 and 12.8.807 proposed to be repealed in this notice.

NEW RULE XI (ARM 12.12.111) DOMESTIC ANIMALS (1) Except as otherwise posted by the department, domestic animals within a developed area must be physically restrained or on a leash no greater than eight feet in length at all times.

- (2) The owner, handler, or person who brought a domestic animal into a public use site is responsible for that animal and is prohibited from:
- (a) allowing a domestic animal to dig, disturb, or otherwise damage a developed area;
 - (b) allowing a domestic animal to be in an area or facility where it is posted by the department that domestic animals are prohibited (excluding service animals);

- (c) violating any public use site-specific posted domestic animal rules;
 - (d) failing to remove and properly dispose of any waste produced by the domestic animal in a developed area; or
 - (e) allowing a domestic animal to bite, chase, harass, or create a nuisance, annoyance, or danger to visitors, wildlife, and other animals.
- (3) Written authorization by the department is required prior to conducting organized dog training or field trials on public use sites.
- (4) In addition to any other penalty in this chapter, individuals in possession of such animals may be expelled from the site.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.203 and 12.8.808 proposed to be repealed in this notice.

NEW RULE XII (ARM 12.12.112) LIVESTOCK (1) The department may close trails and other parts of public use sites to the use of horses, llamas, or similar animals.

(2) Unless otherwise posted by the department, the following are prohibited in public use sites:

- (a) failure to clean up animal feces, feed, or bedding materials in a developed area; or
- (b) to range, graze, water, or allow cattle or other livestock in public use sites except where specifically permitted or authorized by a lease, license, or other written agreement with the department.

(3) Horses, llamas, or similar animals must be corralled or tethered when not in use.

(4) Proof of certified, weed-free feed is required on all department lands.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to clarify the distinction between domestic and livestock animals and to incorporate portions of ARM 12.8.808 and 12.8.809 proposed to be repealed in this notice.

NEW RULE XIII (ARM 12.12.113) WEAPONS (1) Except as posted by the department, discharge of any weapon as defined in 45-2-101, MCA, such as firearms, explosives, air or gas weapons, paintball guns, arrows from a bow, spears, or spear guns on or over either land or water is prohibited in public use sites.

(2) The possession, display, carrying, discharge, or use of a firearm in public use sites must be in compliance with Title 45, chapter 8, part 3, MCA.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.202 and 12.8.810 proposed to be repealed in this notice.

NEW RULE XIV (ARM 12.12.114) HUNTING AND TRAPPING (1) When open to public use, wildlife management areas and fishing access sites are open to all commission-established hunting and trapping seasons unless otherwise prohibited and posted. Written authorization by the department is required prior to trapping on a wildlife management area or fishing access site. The commission authorizes the department to issue specific restrictions on hunting and trapping at a wildlife management area or fishing access site.

(2) State parks are open to all commission-established hunting seasons unless prohibited by the board. The board authorizes the department to issue specific restrictions on hunting at a state park where hunting is allowed. Trapping is prohibited in state parks.

(3) While hunting in a public use site it is prohibited to hunt within a posted safety zone.

(4) Where hunting is legally allowed, temporary hunting blinds, tree stands, goose pits, and similar structures are allowed and must be removed at the end of the season.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate a portion of ARM 12.8.811 proposed to be repealed in this notice.

NEW RULE XV (ARM 12.12.115) MOTORIZED AND NON-MOTORIZED VEHICLES (1) The rules in this chapter apply to all motorized and non-motorized vehicles. The following are prohibited in public use sites:

- (a) operating a motorized or non-motorized vehicle in violation of posted traffic rules, such as speed limits, yield or stop signs, and directional signage;
- (b) operating a motorized or non-motorized vehicle off of authorized routes;
- (c) driving or operating a vehicle on any road, trail, or area which is specifically posted against such use;
- (d) driving or operating a vehicle beyond or around a barrier or structure intended to physically prevent such use;
- (e) operating a snowmobile except in designated areas; or
- (f) operating non-motorized vehicles in violation of posted restrictions.

(2) Unless otherwise posted by the department the maximum speed limit within a developed area is 15 miles per hour, and the maximum speed limit elsewhere in a public use site is 25 miles per hour.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.204, 12.8.812 and 12.8.815 proposed to be repealed in this notice.

NEW RULE XVI (ARM 12.12.116) PARKING (1) The department may designate and sign individual parking spaces or groups of parking spaces for vehicle parking, boat trailer parking, day use parking, and registered camper parking at public use sites. Parking outside of these designated, signed parking spaces is prohibited.

(2) It is prohibited to park a vehicle in any public use site in violation of the posted parking rules.

(3) Vehicles parked in any public use site in violation of (1) and posing an immediate and significant public safety concern may be towed.

(4) If the operator is not with the vehicle at the time of the violation, the registered owner of the motor vehicle is personally responsible for the costs. A defense that the motor vehicle was driven into a public use site by another person is not allowed unless it is shown that at the time, the motor vehicle was being used without the consent of the registered owner.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.813 proposed to be repealed in this notice.

NEW RULE XVII (ARM 12.12.117) UNMANNED VEHICLES (1) Unless permitted by the department, it is prohibited to launch or operate an unmanned terrestrial, aerial, or aquatic vehicle from or on a public use site.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.816 proposed to be repealed in this notice.

NEW RULE XVIII (ARM 12.12.118) ABANDONED PROPERTY

(1) Property, other than vehicles, left unattended for more than 48 hours may be impounded, except where otherwise posted by the department.

(2) Unattended property that interferes with public safety, orderly management of the recreation site or presents a significant threat to department resources may be impounded immediately.

(3) Unattended property impounded pursuant to this rule shall be deemed abandoned unless claimed by the owner or an authorized representative thereof

within 60 days. The 60-day period shall begin at the time the property is placed in the department's custody.

(4) Property left unclaimed pursuant to (3) will be disposed of in accordance with state surplus property policy.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.814 proposed to be repealed in this notice.

NEW RULE XIX (ARM 12.12.119) DAY USE, GROUP USE, AND SPECIAL USE PERMIT (1) Failure to obtain a special use permit when required is prohibited.

(2) A special use permit and payment of required fees are required for:

(a) organized groups or gatherings with 30 or more people at a state park or fishing access site, and 10 or more people at a wildlife management area, fisheries conservation area, or wildlife habitat protection area;

(b) special events such as weddings and reunions; or

(c) reservable facilities such as shelters, pavilions, amphitheaters, meeting rooms, or other facilities or areas.

(3) A special use permit may be required for:

(a) organized groups or gatherings with fewer than 30 people; or

(b) special uses or activities based on type of use or site-specific conditions.

(4) The availability of a special use permit depends on factors such as:

(a) management purposes for the site;

(b) department capacity to manage the event or activity;

(c) impacts on the cultural, heritage, natural, wildlife, and recreational resources;

(d) impacts on interpretive, visitor service, other program activities, or with the administrative activities of the department; or

(e) impacts on the general public at the site.

(5) Facilities such as shelters, pavilions, amphitheaters, meeting rooms, or other similar facilities or areas may be reserved, subject to availability and approval by staff.

(a) Reservations must be made within the established reservation window.

(b) Reservations may be denied or canceled by the site manager to address public safety or resource protection concerns.

(c) When using a reservable facility, the confirmed reservation will serve as the special use permit.

(d) If not reserved, facilities are available on a first-come, first-served basis.

(6) All recipients of a special use permit and people associated with the permitted activity must comply with the terms and conditions of the permit.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.205 and 12.8.804 proposed to be repealed in this notice.

NEW RULE XX (ARM 12.12.120) SOLICITING AND PUBLIC ASSEMBLY

(1) Soliciting or demanding gifts, money, goods, or services is prohibited at public use sites, except pursuant to the terms and conditions of a special use permit or commercial use permit, or other contract issued by the department for such activity.

(2) Public assembly of one or more individuals, including demonstrations, picketing, speechmaking, marching, holding vigils or services, dissemination or sharing of other information, and similar forms of conduct that involve the communication or expression of views or grievances, or are reasonably likely to attract a crowd or onlookers, are allowed at public use sites when a permit has been issued.

(3) The department may place stipulations on the permitted activity, such as stipulations to protect public health and safety, protection of site resources, and to ensure the activity is consistent with the purpose of the site.

(4) An application for a permit must be submitted on a form provided by the department.

(5) Areas within public use sites may be designated for permitted public assembly activities provided that activities would not:

(a) cause injury or damage to cultural, heritage, natural, wildlife, and recreational resources;

(b) interfere with the management purposes for the site;

(c) unreasonably impair the atmosphere of peace and tranquility maintained in natural, historic, or commemorative zones;

(d) unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the department;

(e) substantially impair the operation of public use facilities or services of concessioners, holders of commercial use authorizations, or contractors;

(f) present a clear and present danger to the public health and safety; or

(g) be otherwise incompatible with the nature and traditional use of the particular site involved.

(6) The department must issue a permit or a written denial within ten days of receiving a complete and fully executed application. A permit will be issued unless:

(a) a prior permit application has been or will be granted for the same time and place, and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular area;

(b) it reasonably appears that the event will present a clear and present danger to public health or safety;

(c) the event is of such nature or duration that it cannot reasonably be accommodated in that site, considering things such as damage to site resources or facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use facilities;

(d) the location applied for has not been designated as available under (3); or

(e) the activity would constitute a violation of an applicable law or regulation.

(7) The permit may contain conditions reasonably consistent with the requirements of public health and safety, protection of resources, and the use of the site for the purposes for which it was established. It may also contain reasonable limitations of the equipment used and the time and area within which the event is allowed.

(8) Violation of these regulations or the terms of the permit may lead to permit revocation in addition to other applicable penalties.

(9) Revocation of a permit or an order to cease will be made in writing, with the reasons clearly set forth. In emergency situations, a verbal revocation or order to cease may take place, followed by written confirmation within 72 hours.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate a portion of ARM 12.8.818 proposed to be repealed in this notice.

NEW RULE XXI (ARM 12.12.121) EMERGENCY CLOSURES (1) The commission and board authorize the department to adopt temporary emergency rules to close a public use site or portions thereof to public use as provided in [NEW RULE XXII].

(2) Public use of the public use site means any public occupation of the land.

(3) The commission and board authorize the department to reopen designated recreation areas closed by temporary emergency rules as provided in [NEW RULE XXII].

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate a portion of ARM 12.8.217 proposed to be repealed in this notice.

NEW RULE XXII (ARM 12.12.122) EMERGENCY CLOSURE CRITERIA

(1) The department may, pursuant to [NEW RULE XXI], adopt temporary emergency rules under the following criteria:

(a) the department receives written request for closure of a public use site from the interagency fire management team or similar authority that provides the description of where to implement the fire closure;

(b) the department determines that firefighting efforts on or near the public use site creates imminent peril to the public health, safety, or welfare; or

(c) the department determines that dangerous conditions exist on or near the public use site that creates imminent peril to public health, safety, or welfare.

(2) The department may reopen the public use site by repealing a temporary emergency rule when it determines that firefighting efforts or dangerous conditions

on or near the area have subsided to the extent that imminent peril to the public health, safety, and welfare no longer exists.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate and amend portions of ARM 12.8.218 proposed to be repealed in this notice.

NEW RULE XXIII (ARM 12.12.123) NOTIFICATION OF EMERGENCY CLOSURE AREAS (1) Prior to or simultaneously with the effective date of the closure of a public use site the department shall:

- (a) notify the commission or board;
- (b) post notice of the closure on the agency website;
- (c) post notice of the closure within and near the affected area; and
- (d) send press releases regarding the closure to newspapers and media outlets having general distribution in the affected area.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate and amend portions of ARM 12.8.219 proposed to be repealed in this notice.

NEW RULE XXIV (ARM 12.12.140) PENALTIES AND APPEAL (1) Except where otherwise specified, a violation of these rules is a misdemeanor pursuant to 23-1-106 or 87-6-102, MCA.

(2) Individuals violating these rules may also be expelled immediately from the public use site for up to 48 hours. Failure to comply with the expulsion may constitute criminal trespass.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

REASON: FWP is adopting this rule to place all public land use rules in the same location and to incorporate portions of ARM 12.8.823 and 12.8.824 proposed to be repealed in this notice.

5. The department proposes to repeal the following rules:

12.8.201 GENERAL POLICY

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.202 WEAPONS AND FIREWORKS

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-102, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.203 CONTROL OF ANIMALS

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-102, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.204 VEHICLES

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-102, 87-1-303, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.205 CAMPING, DAY AND GROUP USE

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-102, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.206 FIRES

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-102, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.207 PROPERTY DISTURBANCE

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-102, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.208 DISORDERLY CONDUCT

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-102, 87-1-303, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.209 RESTRICTED AREAS AND NIGHT CLOSURES

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-102, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.210 SANITATION AND LITTER WASTE DISPOSAL

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-102, 87-1-303, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.212 BOATING AND SWIMMING

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-102, 87-1-303, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in statute. It is repealed for clarity and consistency in the administrative rules.

12.8.213 RECREATION USE FEES

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-102, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.217 DEPARTMENT'S AUTHORITY TO CLOSE DESIGNATED RECREATION AREAS DUE TO EMERGENCY

AUTH: 23-1-106, 87-1-303, MCA

IMP: 2-4-303, 23-1-106, 87-1-303, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.218 EMERGENCY DESIGNATED RECREATION AREA CLOSURE CRITERIA

AUTH: 23-1-106, 87-1-303, MCA

IMP: 2-4-303, 23-1-106, 87-1-303, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.219 NOTIFICATION OF EMERGENCY DESIGNATED RECREATION CLOSURE AREAS

AUTH: 23-1-106, 87-1-303, MCA

IMP: 2-4-303, 23-1-106, 87-1-303, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.801 DEFINITIONS

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.802 PROPERTY DISTURBANCE

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.803 CAMPING AND LODGING

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.804 DAY USE, GROUP USE, AND SPECIAL USE PERMIT

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.805 FIRES

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.806 FOOD STORAGE

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.807 SANITATION AND WASTE DISPOSAL

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.808 CONTROL OF ANIMALS

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.809 HORSES AND PACK ANIMALS

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.810 WEAPONS

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.811 HUNTING AND TRAPPING

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.812 MOTOR VEHICLES

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.813 PARKING

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.814 ABANDONED PROPERTY

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.815 USE OF NONMOTORIZED VEHICLES

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.816 UNMANNED AIRCRAFT SYSTEMS AND MODEL AIRCRAFT

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.817 GEOCACHING

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.818 SOLICITING AND PUBLIC ASSEMBLY

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.819 SMOKING

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.820 RESTRICTED AREAS AND NIGHT CLOSURES

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.821 DISTURBANCES

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.822 INTERFERENCE WITH AGENCY FUNCTIONS

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.823 PENALTIES

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

12.8.824 APPEALS

AUTH: 23-1-106, 23-1-111, MCA

IMP: 23-1-106, 23-1-111, MCA

REASON: FWP is proposing repeal of this rule because it duplicates information in the proposed rules. It is repealed for clarity and consistency in the administrative rules.

6. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Charlie Sperry, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or email fwppublicuserules@mt.gov, and must be received no later than 5:00 p.m., October 10, 2023.

7. Christina Bell or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department, board, or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to cbell@mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and repeal of the above-referenced rules will not significantly and directly impact small businesses.

11. With regard to the Department of Public Health and Human Services (DPHHS) consultation, review, and approval requirements for rules "with regard to issues of public health and human sanitation," FWP provided these proposed rules to DPHHS on June 16, 2023, and received approval prior to publication of this notice pursuant to 23-1-111(1)(c) and 87-1-303(2), MCA.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

/s/ Russ Kipp
Russ Kipp
Chair
State Parks and Recreation Board

Certified to the Secretary of State August 29, 2023.

BEFORE THE STATE PARKS AND RECREATION BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I and II pertaining to the Smith) PROPOSED ADOPTION
River bonus point permit system)

TO: All Concerned Persons

1. On September 29, 2023, at 10:00 a.m., the State Parks and Recreation Board will hold a public hearing via the ZOOM meeting platform to consider the proposed adoption of the above-stated rules. There will be no in-person hearing. Interested parties may access the telephonic public hearing in the following way:

Dial by telephone: + 1 646 558 8656
Meeting ID: 820 2847 1950
Passcode: 780988

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Fish, Wildlife and Parks (FWP), no later than 5:00 p.m., on September 22, 2023, to advise us of the nature of the accommodation that you need. Please contact Regina Reynolds, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail to Regina.Reynolds@mt.gov.

3. Statement of Reasonable Necessity. The State Parks and Recreation Board (board) has statutory authority to establish rules governing the issuance of Smith River recreational use permits. The 2023 Legislature passed House Bill (HB) 846, which created a bonus point authority for Smith River permit applications, limited permits for nonresidents, and provided rulemaking authority to the board. The purpose of the proposed rules is to mimic the already successfully implemented hunting bonus point system which will provide consistency and clarity for the public and the agency in this new permitting process.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I (ARM 12.3.650) SMITH RIVER PERMIT (1) A permit and payment of floating fees are required to float the Smith River from the Camp Baker put-in to the Eden Bridge take-out year-round. This requirement does not apply to a landowner conducting a day float solely for the purpose of performing maintenance on their contiguous fee title property adjacent to the Smith River in the permitted section of the river.

(2) The permit authorizes the holder and the members of their group to a float beginning on the date specified on the permit.

(3) The permit is issued to an individual and is non-transferable and non-refundable.

(4) A person must submit a permit application to participate in the general lottery. A person must be a minimum of 12 years of age at the time they submit a permit application. No person may submit more than one permit application. A person may purchase an unlimited number of Smith River Super Permit lottery chances.

(5) A permit season begins on April 1 and continues through March 31 of the following year. The percentage of overall permits issued to nonresidents is limited by 23-2-408(1)(b), MCA.

(a) The department shall use a general random lottery to allocate permits that authorize a launch date from April 1 through August 15.

(b) Permits that authorize a launch date from August 16 through March 31 must be obtained by contacting the department's regional office in Great Falls.

(6) A person receiving a permit through the general lottery for a launch date during the peak season of May 15 through June 15 may not apply for a permit the following calendar year for a launch date within this same time period. They may apply for a permit outside of the peak season, accompany another permitted group during the peak season, obtain a cancelled launch permit, or apply for a Super Permit. The department may waive this restriction for trips cancelled due to unsafe conditions caused by inclement weather or river flows, insufficient flows for navigability, or other similar exigent circumstances, not including trips cancelled due to undesirable fishing conditions.

(7) Any permits on dates not fully subscribed during the general lottery shall be made available by the end of March on a first come, first served basis subject to 23-2-408, MCA.

(8) The recipient of a permit must notify the department's regional office in Great Falls or the Camp Baker ranger station when cancelling a permit.

(9) A person cancelling their permit less than two days before their launch date shall be prohibited from applying for a permit the following permit season. This restriction does not apply if the river flows are below 100 cubic feet per second. The department may waive the cancellation penalty for permits cancelled less than two days prior to the launch date due to unsafe conditions caused by inclement weather or river flows, insufficient flows for navigability, or other similar exigent circumstances, not including trips cancelled due to undesirable fishing conditions.

(10) A cancelled permit shall be made available on a daily, first come, first served basis subject to 23-2-408(1)(b), MCA.

(11) Each year the department shall conduct an additional lottery that is separate from the general lottery and is used to issue one permit (Smith River Super Permit) that is valid any day of the year of issuance. An individual may purchase an unlimited number of Super Permit lottery chances. The department may reserve one permit from the general lottery or a cancelled permit to ensure compliance with 23-2-408(1)(b), MCA.

(12) Additional rules governing recreation and commercial use on the Smith River can be found in the board's Smith River biennial rules.

AUTH: 23-1-102, 23-1-106, 23-1-111, 23-2-408, MCA

IMP: 23-2-408, 23-2-409, MCA

REASON: The board is proposing this rule to place the board's general biennial Smith River regulations regarding permits into administrative rule, while implementing the provisions of HB 846 from the 2023 legislative session.

- NEW RULE II (12.3.651) SMITH RIVER BONUS POINTS (1) Smith River bonus points are non-refundable and non-transferable between applicants.
- (2) Smith River bonus points do not apply to hunting permits or licenses.
- (3) A person may purchase only one bonus point per year and may:
- (a) purchase a bonus point when applying for a Smith River permit by paying the fee established in 23-2-409, MCA; or
- (b) if the person is otherwise eligible to apply for a Smith River permit and chooses not to apply that year, purchase a bonus point only between July 1 and September 30 of that year.
- (4) The department may only apply accumulated bonus points to a person's chance to obtain a Smith River permit during the lottery if the person purchases a bonus point when applying for the permit.
- (5) The department shall mathematically square the number of bonus points a person has accumulated when conducting the lottery for Smith River permits.
- (6) If an applicant for a Smith River permit has elected to participate in the bonus points program and is unsuccessful in the drawing, they shall retain the bonus points they purchased.
- (7) An applicant's bonus points accumulate until the applicant is successful in drawing a permit.
- (8) If an applicant is successful in drawing a Smith River permit, the applicant's bonus points are reduced to zero for the Smith River.
- (9) If the following special circumstances occur, an applicant who is successful in drawing a Smith River permit may retain their accumulated bonus points if the applicant:
- (a) is a member of the armed forces and is either deployed outside the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) or deployed in response to a state or national emergency; or
- (b) is affected by a catastrophic or major natural disaster or man-made event that requires the applicant's assistance as a member of a local, state, or federal management agency.
- (10) A qualifying applicant under (9) must notify the department a minimum of 14 days prior to the launch date of their permit.
- (11) The director or designee may authorize exceptions for extenuating circumstances.

AUTH: 23-1-102, 23-1-106, 23-1-111, 23-2-408, MCA
IMP: 23-2-408, 23-2-409, MCA

REASON: The board is proposing this rule to place the board's general biennial Smith River permit regulations into administrative rule, while implementing the provisions of HB 846 from the 2023 legislative session.

5. The department contacted HB 846's primary sponsor Representative Tom France on June 16, 2023, by telephone and by email. Representative France indicated that he prefers the Smith River bonus point system mimic the hunting bonus point system as much as possible. Representative France has reviewed the proposed rules in this notice and the approximate timeline of the rulemaking process.

6. Although the fees associated with the Smith River Bonus Point system were set by the legislature, the board is including the revenue estimate provided to the legislators in its fiscal note. The anticipated cumulative income is estimated to be \$158,160 each fiscal year and the number of persons affected is estimated to be 14,514 based on the number of people who applied for a permit in 2022.

7. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Colin Maas, Department of Fish, Wildlife and Parks, 4600 Giant Springs Road, Great Falls, Montana, 59405; or email fwpsmithrulecomments@mt.gov, and must be received no later than 5:00 p.m., October 10, 2023.

8. Regina Reynolds or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

9. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department, board or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to regina.reynolds@mt.gov.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses as the points may only be purchased by individuals.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Russ Kipp
Russ Kipp
Chair
State Parks and Recreation Board

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 18.8.509 and 18.8.513) AMENDMENT
pertaining to Overdimensional Permit)
Requirements) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On October 9, 2023, the Department of Transportation (department) proposes to amend the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require accommodation, contact the department no later than 5:00 p.m. on September 29, 2023, to advise us of the nature of the accommodation that you need. Please contact Russ Christoferson, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620; telephone (406) 444-0454; fax (406) 444-5411; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail rchristoferson@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

18.8.509 SPECIAL PERMIT RESTRICTIONS – SUPER-LOAD PERMIT

(1) through (7) remain the same.

(8) Unless otherwise specified in statute or rule, the following travel restrictions apply to vehicles operating under special permits:

(a) Interstate highways – travel is allowed 24 hours per day, 7 days per week, including holidays and holiday weekends, up to 18 feet wide, and for travel to and from ~~including~~ essential services within one-half mile of the interstate highway.

(b) Non-interstate highways – travel is allowed 24 hours per day, 7 days per week, including holidays and holiday weekends, up to 10 feet wide, 150 feet long, and/or 15 feet 6 inches high.

(i) Loads exceeding 10 feet wide, 150 feet long, and/or 15 feet 6 inches high may only travel during daylight hours, including on a holiday or holiday weekend.

(ii) No travel is allowed on a holiday or holiday weekend for loads exceeding 12 feet 6 inches wide, 150 feet long, and/or 15 feet 6 inches high.

(c) ~~Holiday and holiday weekend travel on interstate highways is allowed 24 hours per day, 7 days per week, up to 18 feet wide, including essential services within one-half mile of the interstate highway.~~ Snow removal equipment – snow removal equipment up to 18 feet wide may travel 24 hours per day, 7 days per week, on all highways while engaged in snow removal operations.

(i) Snow removal equipment operating under ARM 18.8.509A is not subject to pilot vehicle requirements under ARM 18.8.511A or oversize load sign requirements under ARM 18.8.510B(1)(a).

~~(d) Holiday and holiday weekend travel on non-interstate highways is allowed 24 hours per day, 7 days per week for loads up to 10 feet wide and/or 15 feet 6 inches high. Loads exceeding 10 feet wide and/or 15 feet 6 inches high, up to 12 feet 6 inches wide and/or 15 feet 6 inches high may travel during daylight hours only.~~

~~(e) remains the same but is renumbered (d).~~

~~(9) through (13) remain the same.~~

AUTH: 61-10-129, 61-10-155, MCA

IMP: 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, MCA

REASON: The amendment to ARM 18.8.509(8)(b) is necessary to clarify and remove contradictory language regarding width and height requirements for travel on non-interstate highways. The amendment to include new ARM 18.8.509(8)(c) is necessary to specifically exempt private snow removal from the 10-foot width restrictions to allow those vehicles to travel on the highways at nighttime. This exemption is part of the department's Red Tape Relief Initiative to ensure the rules allow what is most beneficial to the traveling public and is currently allowed by department practice but prohibited by existing rule. Snow removal for parking lots and sidewalks are completed by private businesses in Montana, and many private snow removal companies operate during the night to ensure the public can access essential services when they open in the morning. A lot of the snow removal equipment is over the current legal width and thus requires an oversize permit which prohibits travel during hours of darkness. There are many pieces of snow removal equipment that exceed 10 feet in width and operate very early in the mornings during darkness when the travelling public is not yet utilizing the parking lots or sidewalks. This amendment is necessary for the safety of all citizens of Montana during winter months. With the addition of this new language in the rule, snow removal equipment will be given an exemption to allow travel on state highways during hours of darkness.

18.8.513 MAXIMUM WIDTH DIVISIBLE LOADS (1) A single trip or term permit may be issued for reducible divisible loads; to and including 9 feet in width, (9 feet 6 inches baled hay or hay racks), if they are hauled by vehicles that do not exceed 9 feet in total width.

(a) up to 9 feet wide; or

(b) up to 9 1/2 feet wide for small square baled hay; or

(c) up to 10 feet wide for large square baled hay without a hay rack; or

(d) up to 12 feet wide for large square baled hay with a hay rack; or

(e) up to 12 feet wide for large round baled hay or empty trailers with a hay rack.

AUTH: 61-10-155, MCA

IMP: 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, 61-10-126, 61-10-127, 61-10-128, 61-10-129, 61-10-130, 61-10-141, 61-10-142, ~~61-10-143~~, 61-10-144, 61-10-145, 61-10-146, 61-10-147, 61-10-148, MCA

REASON: The amendment to ARM 18.8.513 is necessary to define maximum permitted width for large round or small square bales of hay to reflect HB 26 (2023), (Ch. 115, L. 2023, Section 1), which made amendments to 61-10-102, MCA, regarding commercial movement of round bales up to 144 inches traveling during hours of darkness, as well as removing restrictions for other shipments of baled hay travelling day or night, loaded or empty.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Russ Christoferson, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-0454; fax (406) 444-9263; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail rchristoferson@mt.gov, and must be received no later than 5:00 p.m., October 6, 2023.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Russ Christopherson at the above address no later than 5:00 p.m., October 6, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 829 persons based on 8,292.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on June 30, 2023.

10. The special notice requirements of 2-4-303, MCA, have been fulfilled. On August 29, 2023, written contact with Transportation Interim Committee staff members was made by email.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

12. With regard to the requirements of 2-15-142, MCA, the department has determined that the amendment of the above-referenced rules will not have direct tribal implications.

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Dwane Kailey for
Malcolm D. Long
Director
Department of Transportation

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---------------------------------------|---|-----------------------------|
| In the matter of the adoption of NEW |) | NOTICE OF PUBLIC HEARING ON |
| RULES I through VII and the repeal of |) | PROPOSED ADOPTION, AND |
| ARM 24.150.101, 24.150.201, |) | REPEAL |
| 24.150.202, 24.150.301, 24.150.401, |) | |
| 24.150.402, 24.150.404, 24.150.501, |) | |
| 24.150.503, 24.150.505, 24.150.507, |) | |
| 24.150.512, 24.150.513, 24.150.601, |) | |
| 24.150.602, 24.150.2201, and |) | |
| 24.150.2301 regarding the Licensed |) | |
| Hearing Aid Dispenser Program |) | |

TO: All Concerned Persons

1. On October 3, 2023, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/83434695647>

Meeting ID: 834 3469 5647, Passcode: 052816

-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656

Meeting ID: 834 3469 5647, Passcode: 052816

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 26, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL REASONABLE NECESSITY: In support of the Governor's Red Tape Relief Initiative, the Department of Labor and Industry (department) is conducting comprehensive reviews of the administrative rules of the professional licensing boards and programs administratively attached to the department. This review focuses on updating rules to current standards and procedures, and eliminating unnecessary, redundant, and overburdensome regulations and those duplicated in statute. Other changes replace out-of-date terminology for current language and processes, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for customers and staff. The streamlined rules will increase department efficiencies by further standardizing procedures used among all licensing boards and programs.

The 2023 Montana Legislature enacted Chapter 483, Laws of 2023 (Senate Bill (SB) 456), an act generally revising laws related to hearing aid dispensers and

transferring regulatory oversight from a board (Board of Hearing Aid Dispensers) to a department program (Licensed Hearing Aid Dispenser program). The bill was signed by the Governor on May 8, 2023, and will be effective October 1, 2023. It is reasonably necessary to repeal the board's rules and adopt new, updated program rules to implement the bill.

The department determined it is reasonably necessary to repeal 17 rules and adopt seven new rules to align with the Red Tape Relief Initiative and implement the 2023 legislative changes. The new program rules will be placed in a new ARM chapter. Where additional specific basis for a proposed action exist, the department will identify those reasons immediately following the specific rule.

4. The proposed new rules are as follows:

NEW RULE I FEE SCHEDULE

- (1) Application
 - (a) Hearing aid dispenser \$300
 - (b) Trainee 600
- (2) Active renewal - Hearing aid dispenser 550
- (3) Additional standardized fees are in ARM 24.101.403.
- (4) All fees are nonrefundable.
- (5) Examination fees are set by the examination administrator and paid by the applicant directly to the examination administrator.

AUTH: 37-16-202, MCA

IMP: 37-16-402, MCA

REASON: The department is repealing ARM 24.150.401 and replacing it with this more streamlined new rule. Fees for the practical and jurisprudence examinations are stricken to align with adoption of NEW RULE II. Because current processing costs for initial hearing aid dispenser licenses and out-of-state applicants are very similar, the department will charge the same fee no matter the type of applicant.

The department is eliminating inactive status for hearing aid dispensers and repealing ARM 24.150.505. The historically consistent small number of inactive HAD licensees does not justify the staffing and costs associated with monitoring and renewing them.

Trainee licenses are valid for a full year and may be renewed once without department permission. Because trainees generally complete their supervised experience within the first year and rarely renew even once, the department concluded that it is not necessary to set a fee for trainee renewals. The remaining fees for hearing aid dispenser and trainee licensure and dispenser renewals are staying the same.

There have only been three out-of-state HAD applicants in the past year and the department collected no fees for any reexamination or inactive renewal in the same period. The department estimates the cumulative fee changes will affect approximately three applicants and result in a \$600 reduction in annual revenue.

NEW RULE II EXAMINATION (1) Hearing aid dispenser applicants must pass the International Hearing Society (IHS) written examination or its equivalent.

AUTH: 37-16-202, MCA

IMP: 37-16-402, MCA

REASON: It is reasonably necessary to repeal ARM 24.150.501 and replace it with this new rule to align with statutory changes in SB 456. The bill repealed 37-16-405, MCA, the former trainee license statute, and simplified the examination process with amendments to 37-16-402, MCA.

All licensees are required to know and adhere to all applicable statutes and administrative rules. Requiring an exam that only calls out certain regulations does not lead to greater compliance with the regulations or add to public protection. The department concluded that striking the jurisprudence exam will also eliminate unnecessary delays in the application process.

NEW RULE III BILLS OF SALE/RECEIPTS (1) In addition to provisions of 37-16-303, MCA, each bill of sale and receipt must contain a plain and simple notice of those hearing aids that must be programmed or adjusted only by authorized dealers or dispensers and must be signed by the licensee and purchaser.

(2) For trainee-provided services, all bills of sale and receipts must clearly show:

- (a) trainee's designation, name, and license number; and
- (b) supervisor's name and license number.

AUTH: 37-16-202, MCA

IMP: 37-16-202, 37-16-303, MCA

REASON: It is reasonably necessary to adopt this rule to align with the provisions of SB 456 and replace ARM 24.150.602 which is being repealed. This new rule streamlines and reorganizes the transactional document provisions for ease of use, simplicity, and to implement the statutory changes. The department believes that licensed dispensers and trainees will provide clients clear, readable documents as per acceptable practice standards.

NEW RULE IV TRAINEE LICENSURE – SUPERVISED TRAINING

(1) Hearing aid dispenser applicants must complete 1,000 hours of supervised training while licensed as hearing aid dispenser trainees.

(2) Trainee licenses are valid for one year unless renewed and may be renewed only once without prior department approval.

(3) Trainees must be supervised by qualified licensed hearing aid dispensers who are available for regular and prompt observation, instruction, consultation, and treatment.

(4) To supervise, hearing aid dispensers must:

- (a) be currently licensed and actively practicing in Montana for at least one year; and

(b) have no final discipline in any state against the dispenser's license or a related license such as audiologist, in the two years preceding the request to supervise.

(5) The supervisor and trainee shall immediately notify the department and provide the reasoning for any pause in or termination of the training.

(6) Unsupervised trainees may not practice and must receive department approval before continuing in trainee status.

(7) Credit toward the training is only given when trainees have documented supervision.

(8) Trainees must maintain and submit to the department every 90 days, a dated log documenting their daily tasks and duties that is signed by the trainee and supervisor.

(9) Trainees must submit the final log upon conclusion of the supervised training to obtain approval to sit for the examination per [NEW RULE II].

AUTH: 37-16-402, MCA

IMP: 37-16-402, MCA

REASON: It is reasonably necessary to repeal ARM 24.150.503 and replace it with this new rule to align with statutory changes in SB 456. The bill repealed 37-16-405, MCA, the former trainee license statute, and amended 37-16-402, MCA, to provide for training and examination requirements in department rule. Supervision requirements are being broadened to allow for supervisor discretion as well as multiple business locations.

NEW RULE V RECORD RETENTION (1) As applicable, patient records must include:

- (a) dates, locations, and methods for all patient contacts;
- (b) description of services;
- (c) a record of and receipt for any hearing aids returned; and
- (d) a copy of all final bills of sale.

(2) Dispensers shall maintain patient records for a minimum of seven years from the last recorded date of service. Deceased patient records may be discarded one year after the date of death.

AUTH: 37-16-202, MCA

IMP: 37-16-301, 37-16-303, MCA

REASON: The department is repealing ARM 24.150.402 and adopting this new rule to update in favor of more general and reasonable requirements for record retention. It is reasonable to no longer require that patients receive original documents as licensees will provide originals or quality copies as per generally accepted standards of practice.

The department is removing provisions for record of medical recommendations, mandatory refunds, and delivery verification forms to align with SB 456. The bill struck medical recommendations from 37-16-303, MCA, and repealed 37-16-304, MCA, which contained all refund provisions.

It is reasonably necessary to remove the hearing test requirements and reference to ARM 24.150.601 to align with federal regulations. Effective October 17, 2022, the federal Food and Drug Administration (FDA) finalized a rule establishing a regulatory category for over-the-counter hearing aids at 87 FR 50755. The rule also made related amendments to update the regulatory framework for prescription hearing aids, including the repeal of conditions for sale of hearing aids formerly at 21 CFR 801.421.

It is unnecessary to retain the requirement for dispensers to keep advertisement records. Anyone complaining about a dispenser's advertisements would have the burden of producing a copy of the advertisement to proceed.

NEW RULE VI UNPROFESSIONAL CONDUCT (1) It is unprofessional conduct for licensed hearing aid dispensers to:

(a) violate a federal, state, or local law or rule relating to the conduct of the profession;

(b) initiate telephone contact without first identifying the dispenser's name and company, or making more than one contact, unless the person specifically requests further contact;

(c) contact a person more than once who has a hearing aid still under warranty, unless:

(i) contact is made by the original dispenser; or

(ii) the person specifically requests the additional contact;

(d) perform services outside the licensee's area of training, expertise, competence, or scope of practice or licensure;

(e) fail to adequately supervise, manage, train, or control auxiliary staff or supervisees;

(f) discontinue professional services, unless:

(i) services are completed;

(ii) the person requests the discontinuation;

(iii) alternative or replacement services are arranged; or

(iv) the person is given reasonable opportunity to arrange alternative or replacement services;

(g) delegate a professional task to an unqualified person;

(h) fail to obtain informed consent when warranted;

(i) physically or verbally abuse a patient; and

(j) fail to account for funds received in connection with any services rendered or to be rendered.

AUTH: 37-16-202, MCA

IMP: 37-16-411, MCA

REASON: The department is repealing ARM 24.150.2301 and replacing it with this rule to update, reorganize, and streamline the unprofessional conduct for licensed hearing aid dispensers. This new rule also eliminates any unnecessary duplication between statute and rule. Instead of stating specific state or federal regulations to follow, the department is including (1)(a) to require licensees comply with all applicable laws and regulations.

NEW RULE VII AUDIOMETER CALIBRATION (1) The department may randomly audit renewed licensed hearing aid dispensers for calibration compliance with American National Standards Institute (ANSI) standards.

AUTH: 37-16-202, MCA

IMP: 37-16-202, MCA

REASON: It is reasonably necessary to adopt this new rule to implement 37-16-202, MCA, which permits the periodic inspection and calibration of licensed hearing aid dispensers' audiometric equipment. This rule will provide notice that department auditors will utilize current ANSI standards in their calibration audits.

5. The rules proposed to be repealed are as follows:

24.150.101 BOARD ORGANIZATION

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

REASON: It is reasonably necessary to repeal this rule and ARM 24.150.201, 24.150.202, and 24.150.404 to implement SB 456 which eliminated the board and transferred regulation of hearing aid dispensers to the department. There is no need to incorporate the department's own rules.

24.150.201 PROCEDURAL RULES

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

24.150.202 PUBLIC PARTICIPATION

AUTH: 2-3-103, MCA

IMP: 2-3-103, MCA

24.150.301 DEFINITIONS

AUTH: 37-1-131, 37-16-202, MCA

IMP: 37-1-131, 37-1-304, 37-16-301, 37-16-303, 37-16-304, MCA

REASON: The department is repealing this definitions rule as no longer necessary. SB 456 repealed 37-16-304, MCA, the authorizing statute for a "dispensing fee," as well as the right to cancel provisions that necessitated cancellation notice being "prominently displayed."

The department is removing the "related devices" definition as any device utilized in a licensee's practice is to be used within the generally accepted standards of practice. It is not necessary to define the specific devices.

It is reasonably necessary to strike the definition of "substantially equivalent" as SB 456 greatly simplified licensure requirements for licensed hearing aid dispensers and trainees in 37-16-402, MCA.

24.150.401 FEES

AUTH: 37-1-131, 37-1-134, 37-16-202, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-16-402, 37-16-405, 37-16-406, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE I. See the REASON for NEW RULE I.

24.150.402 RECORD RETENTION

AUTH: 37-1-131, 37-16-202, MCA

IMP: 37-1-131, 37-16-301, 37-16-303, 37-16-304, 37-16-411, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE V. See the REASON for NEW RULE V.

24.150.404 FEE ABATEMENT

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

See the REASON for ARM 24.150.101.

24.150.501 EXAMINATION - PASS/FAIL POINT

AUTH: 37-1-131, 37-16-202, MCA

IMP: 37-16-405, 37-16-406, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE II. See the REASON for NEW RULE II.

24.150.503 TRAINEESHIP REQUIREMENTS AND STANDARDS

AUTH: 37-1-131, 37-16-202, MCA

IMP: 37-1-131, 37-16-301, 37-16-405, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE IV. See the REASON for NEW RULE IV.

24.150.505 INACTIVE STATUS

AUTH: 37-1-319, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: It is reasonably necessary to repeal this rule and eliminate inactive status for hearing aid dispensers. The historically consistent small number of inactive HAD licensees does not justify the staffing and costs associated with monitoring and renewing them.

24.150.507 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2023 Montana Legislature enacted Chapter 390, Laws of 2023 (House Bill 583), an act generally revising licensing and certification laws for military members, military spouses, and veterans. The bill was signed by the Governor on May 3, 2023, and will be effective July 1, 2024.

It is reasonably necessary to repeal this rule to align with the bill's amendments to 37-1-145, MCA. The amended statute provides for all boards and programs to accept relevant military education, training, or service toward license qualifications. Specific board or program rules are no longer needed.

24.150.512 NONROUTINE APPLICATIONS

AUTH: 37-1-131, MCA

IMP: 37-1-101, 37-1-131, MCA

REASON: It is reasonably necessary to repeal this rule and ARM 24.150.513 to implement SB 456 which eliminated the board and transferred regulation of hearing aid dispensers to the department. There is no need to incorporate the department's own rules.

24.150.513 APPLICANTS WITH CRIMINAL CONVICTIONS

AUTH: 37-1-131, MCA

IMP: 37-1-101, 37-1-131, MCA

24.150.601 MINIMUM TESTING

AUTH: 37-16-202, MCA

IMP: 37-16-202, MCA

REASON: Effective October 17, 2022, the FDA finalized a rule establishing a regulatory category for over-the-counter hearing aids at 87 FR 50755. The rule also made related amendments to update the regulatory framework for hearing aids, including the repeal of conditions for sale of hearing aids formerly at 21 CFR 801.421. It is reasonably necessary to repeal this rule to align with and remove provisions that conflict with the federal regulations.

24.150.602 TRANSACTIONAL DOCUMENT REQUIREMENTS - FORM
AND CONTENT

AUTH: 37-16-202, MCA

IMP: 37-16-202, 37-16-303, 37-16-304, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE III. See the REASON for NEW RULE III.

24.150.2201 CONTINUING EDUCATION REQUIREMENTS

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: The department is repealing this rule and eliminating continuing education (CE) requirements for licensed hearing aid dispensers. There is no conclusive proof that requiring CE results in safer hearing aid dispensers. The department believes that licensees will continue to obtain the education necessary to maintain high standards of practice.

24.150.2301 UNPROFESSIONAL CONDUCT

AUTH: 37-1-131, 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-16-411, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE VI. See the REASON for NEW RULE VI.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., October 6, 2023.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 26, 2023, by electronic mail.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 29, 2023.

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|--|---|-----------------------------|
| In the matter of the amendment of |) | NOTICE OF PUBLIC HEARING ON |
| ARM 24.168.301, 24.168.402, |) | PROPOSED AMENDMENT, |
| 24.168.2101, 24.168.2104, and |) | ADOPTION, AND REPEAL |
| 24.168.2301, the adoption of NEW |) | |
| RULE I, and the repeal of ARM |) | |
| 24.168.406, 24.168.411, and |) | |
| 24.168.2307 pertaining to the Board of |) | |
| Optometry |) | |

TO: All Concerned Persons

1. On October 3, 2023, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/89030062383>
Meeting ID: 890 3006 2383, Passcode: 768412
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 890 3006 2383, Passcode: 768412

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 26, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.168.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

- (1) through (3) remain the same.
- (4) "Asynchronous," as distinct from "synchronous," refers to non-live training.
- ~~(4) "Board" means the Board of Optometry as defined in 2-15-1736, MCA.~~
- ~~(5) "Department" means the Department of Labor and Industry as defined in 2-15-1701, MCA.~~
- ~~(6) "DPA" means certification by the board in diagnostic pharmaceutical agents.~~
- (7) through (9) remain the same but are renumbered (5) through (7).

AUTH: 37-10-202, MCA

IMP: 37-10-101, 37-10-103, 37-10-304, MCA

REASON: Reasonable necessity exists to strike the definitions of board and department because they are duplicative of statute. Additionally, in the context of board-adopted rulemaking, they are unnecessary. Reasonable necessity exists to strike the definition of DPA because its only use in these rules is in ARM 24.168.402 which is proposed to be repealed. The board proposes to define asynchronous as it applies to continuing education to clarify the meaning of ARM 24.168.2101.

24.168.402 LICENSURE REQUIREMENTS (1) through (3) remain the same.

~~(4) If an applicant was licensed prior to the inclusion of TMOD in the NBEO examination (1993), the applicant shall:~~

~~(a) provide proof of successful completion of a qualifying examination, or examinations, as defined in 37-10-304, MCA, administered by the licensing authority of the state or jurisdiction granting the license; and~~

~~(b) meet all qualifications to be TPA and DPA certified.~~

(5) and (6) remain the same but are renumbered (4) and (5).

AUTH: 37-1-131, 37-10-202, 37-10-302, MCA

IMP: 37-1-131, 37-1-304, 37-10-301, 37-10-302, 37-10-304, MCA

REASON: Reasonable necessity exists to repeal (4) because it is no longer necessary and is in conflict with statute. Section 37-1-304, MCA is implemented in this rule by (3), which specifies applicants for licensure by endorsement are reviewed by the board on a case-by-case basis. Section (4) overlays an additional requirement for individuals initially licensed prior to 1993. However, 37-1-304, MCA, recognizes licensure without examination of those from other states based on a board determination of substantial equivalency and a lack of reason to deny the license. Repealing this rule should streamline the license application process.

24.168.2101 CONTINUING EDUCATION REQUIREMENTS – AUDIT

(1) Licensed optometrists shall complete 36 hours of approved continuing education (CE) every two years ~~in scientific clinics, forums, or optometric educational studies.~~

(a) Up to 12 hours of asynchronous approved CE courses may be counted toward the CE requirement.

(b) Up to 4 hours of practice management approved CE may be counted toward the CE requirement.

(c) The board does not limit or restrict online approved synchronous CE courses.

~~(2) Licensees shall affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal.~~

(2) The following are exceptions to CE requirements:

~~(3)(a)~~ A person who graduates from an accredited school of optometry and becomes a licensee within one year of graduation is excused from the CE requirement during the first applicable CE cycle.

~~(4)(b)~~ A licensee who is enrolled in a residency program accredited by the ACOE is excused from the CE requirement while the licensee is in the residency program and during the first applicable CE cycle.

~~(5) The board may randomly audit up to 50 percent of all renewed licensees. It is the responsibility of each optometrist to maintain adequate records of participation and completion, and make them available upon board request.~~

~~(a) Random audits will be conducted in odd-numbered years.~~

~~(6) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.~~

(3) The department is authorized to audit CE requirements and shall determine the percentage to audit based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits. Audits will be conducted in odd-numbered years.

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: Reasonable necessity exists to amend this rule to ensure that CE requirements for licensees are contained in a single rule. As such, new language proposed to be added to (1) is transferred from ARM 24.168.2104. This amendment additionally clarifies that asynchronous learning—non-"live" CE courses—may be used for 12 hours of the required CE courses. This clarifies a distinction between synchronous courses and asynchronous courses. As noted by proposed (1)(c), this rule will permit a licensee to complete any amount of CE courses in synchronous, online courses. By this proposal, the board hopes to simplify and modernize CE obligations.

Reasonable necessity exists to modify (3) and (4) of the present rule to place them under a section header of exceptions to general CE requirements. This amendment is proposed to simplify reading of the administrative rules to ease their use for the public.

Reasonable necessity exists to remove (5) to clarify that it is the department, with express authorization from the board, which conducts CE audits on the board's behalf. Audits will continue to be conducted in odd-numbered years. Section 37-1-306, MCA specifies that audits may not exceed 50% of licensees. As such, that provision is duplicative of statute and must be removed. Reasonable necessity exists to remove (6) because administrative suspension requirements are proposed to be consolidated into New Rule I.

24.168.2104 APPROVED CONTINUING EDUCATION (1) remains the same.

~~(2) CE approved by the board must directly relate to the scope of practice of optometry as defined in board statutes and rules.~~

~~(3) The primary objective of CE is the protection of the health, safety, and welfare of the public, and deals primarily with the scope of practice, professional conduct, or ethical obligations of the licensee held. Licensees are responsible for selecting quality programs that contribute to their knowledge and competence and meet these objectives.~~

~~(a) Courses in which the principal purpose is to promote, sell, or offer goods, products, or services to optometrists, or to promote the personal interests of the licensees do not meet CE requirements.~~

~~(4)(2) Approved CE includes courses:~~

~~(a) remains the same.~~

~~(b) approved by the ARBO's Council on Optometric Practitioner Education (COPE); or~~

~~(c) accredited by the Accreditation Council for Continuing Medical Education (ACCME); or~~

~~(d) of the American Board of Optometry Continuous Assessment Program.~~

~~(5) CE courses offered and completed on the Internet or via other similar electronic means must comply with all the requirements in this rule.~~

~~(6) The board will grant up to four hours of credit for practice management courses and up to twelve hours of credit for CE correspondence courses or Internet courses every CE cycle.~~

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: Reasonable necessity exists to remove (2) and (3) because they are no longer relevant to the CE approvals set forth in this rule. While the sections set forth the purpose of CE, because the board now approves CE by category, rather than by a specific course, the general statements of purpose are no longer necessary. In the interest of shortening the rule for ease of use, the sections are proposed to be stricken. Reasonable necessity exists to strike (5) and (6) because they are proposed by this rulemaking to be incorporated into ARM 24.168.2101.

24.168.2301 UNPROFESSIONAL CONDUCT (1) It is unprofessional conduct for a licensee or applicant to violate any statute, rule, or standard of care governing their scope of practice, or exceeding the scope of practice for which they are licensed, trained, and educated to perform. The following additionally constitutes unprofessional conduct by licensees or license applicants:

~~(a) making a false or misleading statement regarding the licensee's skill or the efficacy or value of the medicine, device, treatment, or remedy prescribed by or used at the licensee's direction in the treatment of any disease or other condition;~~

~~(b) negligence in the practice of optometry as determined by the board;~~

~~(c) gross incompetence in the practice of optometry as determined by the board;~~

~~(d) a pattern of practice or other behavior that demonstrates rendering of substandard care, either individually or as part of a third-party reimbursement agreement or any other agreement;~~

~~(e)~~(a) commission of any act of sexual abuse, misconduct, or exploitation whether or not it is related to the licensee's practice of optometry;

~~(f)~~(b) allowing one's professional conduct or judgment in the practice of optometry to be directed, managed, or controlled by a person who is not ~~licensed to practice optometry~~ an optometrist or a medical doctor in Montana;

~~(g)~~(c) prescribing, selling, administering, distributing, or giving any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than accepted diagnostic or therapeutic purposes or to oneself or a family member;

~~(h) prescribing, selling, administering, distributing, or giving a drug legally classified as a controlled substance or as an addictive or dangerous drug to self or a family member;~~

(i) through (l) remain the same but are renumbered (d) through (g).

~~(m) any adverse judgment, award, or settlement against the licensee resulting from a professional liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in Title 37, chapters 1 and 10, MCA, and administrative rules promulgated thereunder;~~

(n) through (p) remain the same but are renumbered (h) through (j).

~~(q) for a licensee to knowingly submit or cause to be submitted any misleading, deceptive, or fraudulent representation on a claim form, bill, or statement;~~

(r) remains the same but is renumbered (k).

~~(s)~~(l) providing ophthalmic lenses and materials that do not meet federally established impact resistance standards; ~~or~~

~~(t)~~(m) persistently maintaining, in the practice of optometry, unsanitary offices, practices, or techniques; or

(n) failing to maintain or permit patient access to accurate patient records for at least five years from the last time the patient was treated.

AUTH: 37-1-131, 37-1-319, 37-10-202, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-10-301, MCA

REASON: Reasonable necessity exists to strike provisions of this rule because they are duplicative of statute. Administrative rules must not unnecessarily duplicate statutes. 2-4-305, MCA. Subsection (1)(a) duplicates 37-1-316(5), MCA. Subsections (1)(b) through (d) duplicate 37-1-316(18), MCA. Subsection (1)(f) is proposed to be amended to clarify that optometrists may affiliate with and be directed by medical doctors—in particular, but not exclusively, ophthalmologists. Subsection (1)(h) is proposed to be incorporated into (1)(g) with the addition of a few words. Subsection (1)(m) is duplicative of 37-1-316(18), MCA. Subsection (1)(q) is duplicative of 37-1-316(4)-(5), MCA. Subsection (1)(e) is proposed to be expanded to include situations not directly related to a licensee's practice.

4. The proposed new rule is as follows:

NEW RULE I ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) through (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA

IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

5. The rules proposed to be repealed are as follows:

24.168.406 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: Reasonable necessity exists to repeal this rule, effective October 1, 2023, at the earliest, due to House Bill 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

24.168.411 GENERAL PRACTICE REQUIREMENTS

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-1-131, 37-10-202, MCA

REASON: Reasonable necessity exists to repeal this rule because (1) is duplicative of ARM 24.168.2301(1)(f), in that it protects optometrist practice from undue influence by unlicensed individuals. Some concern has been previously expressed that this rule may protect against problematic practice physical locations. However, this rule does not address practice location. Section (2) is proposed in this rulemaking to be included within ARM 24.168.2301.

24.168.2307 SCREENING PANEL

AUTH: 37-1-131, MCA

IMP: 37-1-131, 37-1-307, MCA

REASON: Reasonable necessity exists to repeal this rule because it is unnecessary. The creation of screening panels is statutorily driven, and does not require an administrative rule to effectuate. Repealing the rule assists in creating simplicity, brevity, and clarity in the administrative rules of the board.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., October 6, 2023.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF OPTOMETRY
DOUGLAS KIMBALL, O.D.
PRESIDENT

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.104.3001, 37.104.3012,) PROPOSED AMENDMENT
37.104.3020, and 37.104.3022)
pertaining to trauma facility)
designation)

TO: All Concerned Persons

1. On September 28, 2023, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/89229080338?pwd=Mm84SDZKUkFHUkpDZCtJUzNCVm9EUT09>, meeting ID: 892 2908 0338, and password: 320256; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 892 2908 0338, and password: 320256. Find your local number: <https://mt-gov.zoom.us/j/89229080338?pwd=Mm84SDZKUkFHUkpDZCtJUzNCVm9EUT09>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 14, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.104.3001 DEFINITIONS In addition to the definitions in 50-6-401, MCA, the following definitions apply to this subchapter:

(1) "Application" means the submission of written information by a health care facility, on forms required by the department, requesting designation as a specific level of trauma facility and providing information regarding its compliance with the Montana Trauma Facility Designation Criteria ~~of the State Trauma Plan~~ concerning the resources a facility must have to qualify as that level of trauma facility.

(2) "Area trauma hospital" means a health care facility that is designated by the department as having met the essential standards for area trauma hospitals as specified in the Montana Trauma Facility Designation Criteria ~~of the State Trauma Plan~~.

(3) "Community trauma facility" means a health care facility that is designated by the department as having met the standards for a community trauma facility as described in the Montana Trauma Facility Designation Criteria ~~of the State Trauma Plan~~.

(4) "Comprehensive trauma center" means a health care facility that is designated by the department as having met the standards for a comprehensive trauma center as described in the Montana Trauma Facility Designation Criteria.

(4) remains the same but is renumbered (5).

~~(5)(6)~~ "Designated facility" refers to a health care facility that has been determined by the department to satisfy the requirements of one of the four categories of trauma facilities as described in the Montana Trauma Facility Designation Criteria ~~of the State Trauma Plan~~.

~~(6)(7)~~ "Designation" means a formal determination by the department that a health care facility has met the requirements for a level of trauma facility as described in the Montana Trauma Facility Designation Criteria ~~of the State Trauma Plan~~.

(7) and (8) remain the same but are renumbered (8) and (9).

~~(9)(10)~~ "Focused review" means a method established by the department to assess a health care facility's compliance with a corrective action plan to meet the resource criteria in the Montana Trauma Facility Designation Criteria ~~of the State Trauma Plan~~.

~~(10)(11)~~ "Montana Trauma Facility Designation Criteria ~~(2019)~~" means the document within the Montana Trauma System Plan that contains the requirements for a facility to meet in order to be designated as a particular type of trauma care facility. The department adopts and incorporates by reference the department's Montana Trauma Facility Designation Criteria ~~(2019)~~ (2024). A copy of the Montana Trauma Facility Designation Criteria ~~(2019)~~ (2024) may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, Emergency Medical Services and Trauma Systems Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 or electronically at <https://dphhs.mt.gov/publichealth/emsts/Trauma/Regulation>.

(11) through (16) remain the same but are renumbered (12) through (17).

~~(17)(18)~~ "Regional trauma center" means a health care facility that is designated by the department as having met the criteria for a regional trauma center as described in the Montana Trauma Facility Designation Criteria ~~of the State Trauma Plan~~.

(18) through (22) remain the same but are renumbered (19) through (23).

~~(23)(24)~~ "Trauma receiving facility" means a health care facility that is designated by the department as having met the criteria for a trauma receiving facility as described in the Montana Trauma Facility Designation Criteria ~~of the State Trauma Plan~~.

AUTH: 50-6-402, MCA

IMP: 50-6-401, 50-6-402, MCA

37.104.3012 LEVELS OF TRAUMA FACILITIES (1) The department may designate a health care facility as belonging to one of the following ~~four~~ levels of trauma facilities:

(a) comprehensive trauma center;

(a) through (d) remain the same but are renumbered (b) through (e).

(2) Requirements for each level are contained in the Montana Trauma Facility Designation Criteria ~~of the State Trauma Plan~~.

AUTH: 50-6-402, MCA

IMP: 50-6-402, MCA

37.104.3020 COMPOSITION OF SITE REVIEW TEAMS ~~(1) The site review team for regional trauma centers must be composed of out-of-state surveyors, including two general surgeons and department staff or any other members determined to be necessary by the department or requested by the health care facility being reviewed.~~

~~(2)~~(1) The site review team for comprehensive trauma centers, regional trauma centers, area trauma hospitals, and community trauma facilities must be composed of either out-of-state or in-state surveyors from a trauma center that is not owned or operated by the same entity as the applicant ~~Montana trauma region other than the one in which the facility is located~~ and must include a general surgeon, a trauma nurse coordinator, department staff, and other members determined to be necessary by the department or requested by the health care facility being reviewed.

~~(3)~~(2) The site review team for a trauma receiving facility must be composed of either out-of-state or in-state surveyors from a trauma center that is not owned or operated by the same entity as the applicant and must include a physician, a trauma nurse coordinator, department staff, and other members determined to be necessary by the department or requested by the health care facility being reviewed.

AUTH: 50-6-402, MCA

IMP: 50-6-402, MCA

37.104.3022 DESIGNATION PROCEDURES FOR FACILITIES VERIFIED AS A TRAUMA FACILITY BY THE AMERICAN COLLEGE OF SURGEONS

(1) A health care facility with a current certificate of verification from the American College of Surgeons as a trauma facility qualifies as one of the following types of Montana trauma facility as set out in (2), providing it submits an application, department staff attend the on-site or virtual review conducted by the American College of Surgeons, and the facility demonstrates compliance with ~~any~~ all requirements described in the Montana Trauma Facility Designation Criteria ~~of the State Trauma Plan~~ that may differ from ~~exceed~~ the American College of Surgeons' standards in the college's document entitled "Resources for Optimal Care of the Injured Patient: ~~2014~~ 2022 standards." A copy of this document may be obtained as set forth in (8).

(2) A current certificate of verification for the following levels established by the American College of Surgeons ~~qualified~~ qualifies a health care facility as the following type of Montana trauma facility:

- (a) a level I trauma center qualifies as a comprehensive trauma center;
- (a) through (c) remain the same but are renumbered (b) through (d).
- (3) and (3)(a) remain the same.
- (b) any additional information required by the department to verify compliance with any requirements described in the Montana Trauma Facility Designation Criteria ~~of the State Trauma Plan~~ that ~~exceed~~ differ from the American College of Surgeons' standards;
- (c) through (4) remain the same.
- (5) When the application and the site review are complete, and the American College of Surgeons' letter is received that indicates whether the facility is ~~successfully~~ verified as a trauma facility, the department will provide a copy of the application and the letter to the designation subcommittee at the next quarterly State Trauma Care Committee meeting.
- (6) through (7)(a) remain the same.
- (b) issue a provisional designation to the applicant provided that:
- (i) through (d) remain the same.
- (8) The department adopts and incorporates by reference "Resources for Optimal Care of the Injured Patient: ~~2014~~ 2022 standards," published by the American College of Surgeons. The document contains the trauma facility criteria used by the American College of Surgeons in its process for verification of trauma facilities. A copy may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, Emergency Medical Services and Trauma Systems Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 50-6-402, MCA

IMP: 50-6-402, 50-6-410, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend the above-stated rules pertaining to trauma facility designation. The proposed rule amendments are necessary to add a new trauma care designation level for trauma care centers seeking to serve as comprehensive trauma centers. The proposed rule amendments also update trauma facility designation criteria to reflect the continued advancement of medical practice and conform with best practices. The department is also proposing amendments to update vague and outdated language to improve clarity and readability of the rules.

ARM 37.104.3001

The department is proposing to amend this rule to update the Montana Trauma Facility Designation Criteria adopted and incorporated by reference under ARM 37.104.3001(10). Two primary changes to the criteria are proposed. First, the department proposes to add a new comprehensive trauma center designation level. This new designation level will enable trauma facilities meeting the criteria to be designated as comprehensive trauma centers. The establishment of comprehensive trauma centers in Montana will enable patients in need of the highest level of trauma

care to have the option of receiving care within Montana rather than having to be transferred out of state. Second, the department is proposing to update trauma designation criteria based upon the continued advancement of medical practice and to conform with nationally recognized best practices.

A copy of the proposed changes to the Montana Trauma Facility Designation Criteria is electronically accessible at:

<https://dphhs.mt.gov/publichealth/emsts/Trauma/Regulation>.

ARM 37.104.3012

The department is proposing to amend this rule to add comprehensive trauma centers to the list of trauma center designation levels available in Montana. This proposed rule change aligns with the changes being proposed to the Montana Trauma Facility Designation Criteria.

ARM 37.104.3020

The department is proposing to amend this rule to make comprehensive trauma centers part of the site review team process. This proposed rule change aligns with the changes being proposed to the Montana Trauma Facility Designation Criteria. The department is also proposing to update the rule to align with nationally recognized best practices and to remove vague and outdated language.

ARM 37.40.3022

The department is proposing to amend this rule to add a comprehensive trauma center designation level to the acceptable list of verification allowed by the American College of Surgeons. This proposed rule change aligns with the changes being proposed to the Montana Trauma Facility Designation Criteria. The department is also proposing to update the rule to align with nationally recognized best practices and to remove vague and outdated language.

The department intends for these proposed rule amendments to be effective January 1, 2024.

Fiscal Impact

There is no anticipated fiscal impact associated with this rulemaking.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., October 6, 2023.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above.

8. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Robert Lishman

Robert Lishman
Rule Reviewer

/s/ David Gerard

David Gerard, Deputy Director
Department of Public Health and Human
Services

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.12.401 pertaining to the) PROPOSED AMENDMENT
increase of laboratory fees)

TO: All Concerned Persons

1. On September 28, 2023, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/82239367655?pwd=ODMrT3NMQzE0ZFV0djhBSzJZUXJIUT09>, meeting ID: 822 3936 7655, and password: 559022; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 822 3936 7655, and password: 559022. Find your local number: <https://mt-gov.zoom.us/j/82239367655>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 14, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.12.401 LABORATORY FEES FOR ANALYSES (1) remains the same.

(2) The department will maintain a list of all tests available from the lab and the price of each test. The department adopts and incorporates by reference the Public Health Laboratory Testing Fee Schedule and the Environmental Laboratory Testing Fee Schedule Laboratory Test Fee List effective March 1, 2021, December 1, 2023, which are available on the web site of the Department of Public Health and Human Services at <http://dphhs.mt.gov/publichealth/LaboratoryServices/PublicHealthLabTesting> <https://dphhs.mt.gov/publichealth/LaboratoryServices/index>, and by mail upon request to the lab at the Department of Public Health and Human Services, Public Health and Safety Division, P.O. Box 6489, Helena, MT 59604-6489.

(3) and (4) remain the same.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.12.401 to increase fees that the Laboratory Services Bureau charges for services provided by the Montana Public Health and Environmental Laboratories.

The Laboratory Services Bureau is primarily a fee for service-funded operation although some general funds and federal grant support do contribute to maintaining operational infrastructure. The laboratories rely on numerous commercial suppliers and manufacturers of laboratory services, instruments, and consumables to operate, most of whom have increased their fees on an annual basis.

The Laboratory Services Bureau has not raised fees for over five years. Without the ability to adjust fees, the laboratory will not be able to maintain critical services provided by the state as the cost of operations has steadily increased over the past five years. There is also an increasing amount of laboratory services that are performed for public health purposes that are not revenue generating. The proposed fee changes will be effective December 1, 2023.

Copies of the proposed fee schedules are located at:
<https://dphhs.mt.gov/publichealth/LaboratoryServices/index>.

Fiscal Impact

The proposed increase in fees will impact approximately 1,850 health care providers and environmental services clients. The proposed fee changes are not a uniform across the board percent increase, but many laboratory testing service fees will increase between six and ten percent. Due to the varying percentages of each fee increase and the fluctuating number of tests ordered by clients each year, the department is unable to provide an estimate of the anticipated total amount of revenue that will be generated by the fee increase. The proposed fees are comparable to those of other laboratory service providers in those instances where competitive services exist.

5. The department intends to adopt this proposed rule amendment effective December 1, 2023.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., October 6, 2023.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Robert Lishman

Robert Lishman
Rule Reviewer

/s/ David Gerard

David Gerard, Deputy Director
Department of Public Health and Human
Services

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF PROPOSED REPEAL
42.20.519 pertaining to property tax)
abatements for gray water systems) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Revenue proposes to repeal the above-stated rule.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later 5:00 p.m. on September 15, 2023, to advise us of the nature of the accommodation you need. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov.

3. The department proposes to repeal the following rule:

42.20.519 APPLICATIONS FOR PROPERTY TAX ABATEMENT FOR
GRAY WATER SYSTEMS

AUTH: 15-1-201, MCA

IMP: 15-24-3201, 15-24-3202, 15-24-3203, 15-24-3204, 75-5-305, 75-5-325,
75-5-326, 75-5-327, MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.20.519 to implement House Bill 25 (HB 25) enacted by the 68th Montana Legislature which eliminated the gray water system property tax abatement and repealed 15-24-3201 through 15-24-3204, and 15-24-3211, MCA. The 10-year tax abatement has been available to new residential and multi-residential construction since 2012; however, only one property owner ever applied and utilized the tax abatement, and that property owner will not be affected by this rule repeal because they have been grandfathered under the previous law. The department's legislative proposal in HB 25 and this administrative rule repeal carries out the agency's directive under Governor Gianforte's Red Tape Relief Initiative.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., October 10, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., October 10, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Since the department cannot accurately estimate the number of those directly affected by this rule action, the number of hearing requests necessary for the department to conduct a public hearing shall be one.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, email, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a different mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this notice is available through the Secretary of State's web site at sosmt.gov/arm/register/.

9. The bill sponsor contact requirements of 2-4-302, MCA, have been fulfilled. The primary bill sponsor was contacted by email on July 19, 2023, and on August 29, 2023.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Scott Mendenhall for
Brendan Beatty
Director of Revenue

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

| | | |
|--|---|-----------------------|
| In the matter of the adoption of New |) | NOTICE OF ADOPTION, |
| Rules I and II; the amendment of |) | AMENDMENT, AND REPEAL |
| ARM 18.7.203, 18.7.204, and |) | |
| 18.7.207; and the repeal of 18.7.205 |) | |
| and 18.7.221 pertaining to Utility and |) | |
| Eligible Project Right-of-Way |) | |
| Occupancy |) | |

TO: All Concerned Persons

1. On July 7, 2023, the Department of Transportation published MAR Notice No. 18-102 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 613 of the 2023 Montana Administrative Register, Issue Number 13.

2. The department has amended the above-stated rules as proposed.

3. The department has repealed the above-stated rules as proposed.

4. The department has adopted the above-stated rules as proposed: New Rule I (18.7.219) and New Rule II (18.7.220).

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

Comment No. 1: A commenter stated that its association members, which are community-based, locally owned broadband providers serving rural Montana and other communities, are also "utilities" as defined in 69-3-101, MCA, and that they qualify for highway right-of-way occupancy permits, unlike non-utilities who may apply for encroachment permits.

Response No. 1: In general, "community-based, locally owned broadband providers serving rural Montana and other communities" may be considered public utilities if they meet the definition of public utility found in ARM 18.7.202 and 69-3-101, MCA. A dedicated broadband cable which does not meet the definition would be considered a non-public utility. The commenter did not suggest any change to proposed rule wording, and the new rules will be adopted as proposed.

Comment No. 2: A commenter renewed its earlier request for expedited treatment of broadband utility applications under Federal Highway Administration (FHWA) accommodation rules.

Response No. 2: The department will process all applications on a first-come, first-serve basis and will process completed application requests judiciously and punctually based on available resources and the complexity and size of each project. The commenter did not suggest any change to proposed rule wording, and the new rules will be adopted as proposed.

Comment No. 3: A commenter stated federal regulations exempt utility infrastructure from fair market value assessment in highway rights-of-way and that Chapter 694, Laws of 2023 (SB 521), requires the department to "seek an exception to paying the fair market value" if requested by an applicant. Although there is no "shot clock" or timeline for either the department or FHWA to review and accept a request, the commenter stated it assumes the FHWA and the department will approve, submit, and accept a request from a utility, since the FHWA itself has already determined utility accommodations are in the public interest.

Response No. 3: As per 60-4-601, MCA, the department will facilitate FHWA approval of a fair market waiver request when submitted by applicants. Facilities must demonstrate that they are an eligible project facility and that they qualify as a clean energy and connectivity facility. The department waiver requests will be reviewed and approved as part of the department's Utilities Permitting Administration System (UPAS) application process which has been developed into a streamlined electronic workflow and approval process. The commenter did not suggest any change to proposed rule wording, and the new rules will be adopted as proposed.

Comment No. 4: A commenter stated a concern that time is of the essence when it comes to broadband utility applications because nearly \$1 billion of federal broadband stimulus funding is budgeted for Montana, over \$300 million has already been awarded for broadband infrastructure projects, and funding is set to expire at the end of 2028. This commenter pointed out that there is no time restriction for either the department or FHWA to review and accept applications but said projects need to be engineered this year and initiated next year to meet the 2028 deadline.

Response No. 4: See response to Comment No. 2.

Comment No. 5: A commenter stated the department should insert into proposed New Rule I(3)(e), a requirement that the department consider whether an applicant is a utility that qualifies for expedited application approval under FHWA utility accommodation rules.

Response No. 5: All applicants will be given equal opportunity and attention without preference based on facility type. Please also see the response to Comment No. 3. New Rule I is being adopted as proposed.

Comment No. 6: A commenter asked the department to add a section (5) to proposed New Rule I that would require the department to seek expedited review of utility applications for FHWA utility accommodation.

Response No. 6: See responses to Comment Nos. 2 and 3. New Rule I is being adopted as proposed.

Comment No. 7: A commenter requested a change to proposed New Rule II, substituting "non-utility" encroachment permits for "non-regulated telecommunications," as the distinction between occupancy permits [*sic*] and encroachment permits hinges on utility classification, not whether an entity is regulated or not.

Response No. 7: "Public utility" is defined in 69-3-101, MCA, and specifically states the term includes "regulated telecommunications service." Use of the term "non-regulated telecommunications" in New Rule II to describe a non-public utility is therefore consistent with the statute. New Rule II is being adopted as proposed.

Comment No. 8: A commenter requested that the department more specifically define the meaning of the term "eligible projects."

Response No. 8: "Eligible projects" is defined in 60-4-601(7)(a), MCA.

Comment No. 9: A commenter stated the department's Right-of-Way Operations Manual, at chapter 43, "Utility Occupancy on Highway Right-of-Way (Manual) should be conformed to reflect the pending changes to the department's rules. This commenter stated that, although the Manual is subordinate to the rules, several of the Manual's guidelines are inconsistent with the proposed rules and could lead to confusion if not amended to better reflect changes to the rules.

Response No. 9: The department is currently updating the Manual to accommodate the implementation of Chapter 694, Laws of 2023 (SB 521), and interstate right-of-way occupancy by eligible projects. The updated Manual will be published at the time New Rules I and II are effective.

Comment No. 10: One commenter stated the change to Montana's laws in 2023 added wireless technology to the definition of "eligible project," stating this particular action advances both Montana and federal policies to promote the deployment of broadband using a mix of wireless and other technologies.

Response No. 10: The department acknowledges receipt of the comment regarding the subject of the rulemaking. The commenter did not suggest any change to proposed rule wording, and the new rules will be adopted as proposed.

Comment No. 11: A commenter stated the department had previously determined wireless facilities could occupy non-interstate highways. This commenter stated the primary effect of Chapter 694, Laws of 2023 (SB 521), was to ensure that wireless facilities can be installed along all interstate highways in Montana, as well, thus advancing both Montana and federal policies to promote the availability of broadband services using a mix of wireless and other technologies.

Response No. 11: The department acknowledges receipt of the comment regarding the subject of the rulemaking. The commenter did not suggest any change to proposed rule wording, and the new rules will be adopted as proposed.

Comment No. 12: A commenter stated wireless is a cost-effective way to provide broadband service, is faster to deploy, does not cause the disruption that underground trenching for fiber installation often requires, and will promote safety on roads and benefit communities where wireless service will extend beyond the right-of-way in which it is placed. This commenter stated the MOBILE NOW Act (2018) provides for broadband deployment, including wireless technology, while prohibiting state agencies from discriminating among different types of broadband providers.

Response No. 12: The department does not discriminate against wireless deployment in its right-of-way. All broadband applications including wireless will be approved based on available right-of-way and compliance with applicable laws and regulations. The department acknowledges wireless facilities fall within the definition of "eligible projects," found in 60-4-601(7)(a), MCA. The commenter did not suggest any change to proposed rule wording, and the new rules will be adopted as proposed.

Comment No. 13: A commenter stated the Montana Legislature, by passing Chapter 694, Laws of Montana (SB 521), had advanced both Montana and federal policies to promote the availability of broadband services to the public using a mix of wireless and other technologies.

Response No. 13: See response to Comment No. 12.

Comment No. 14: A commenter stated it supports the concepts contained in proposed New Rules I and II that advance the Legislature's objective to expand broadband across Montana, including wireless facilities.

Response No. 14: See response to Comment No. 12.

Comment No. 15: A commenter stated the department should include another reference to 60-4-601, MCA, in New Rule I(2), as well as a cross-reference to the UPAS and other department rules.

Response No. 15: Proposed New Rule I(2) cross-references the UPAS and administrative rules for all eligible facility installations. Reference to 60-4-601, MCA, is made in New Rule I(3)(e) and (4)(a). No further revision is necessary, and New Rule I will be adopted as proposed.

Comment No. 16: A commenter stated the language in New Rule I(4)(a) addressing right-of-way use agreements should be amended so that it either mirrors the definition of "eligible project" in Chapter 694, Laws of 2023 (SB 521), or replaces the words "both pipeline and fiber optic or other communications type cables and

associated above-ground infrastructure facilities" with "eligible project as defined in MCA Section 60-4-601."

Response No. 16: Proposed New Rule I(4)(a) states: "The department shall enter right-of-way use agreements in a manner so as to reserve, where possible, sufficient underground right-of-way for eligible projects as defined in 60-4-601 MCA." No further revision is necessary, and New Rule I will be adopted as proposed.

Comment No. 17: A commenter stated New Rule I(3) requires applicants to pay an electronic use convenience fee, but the amount of that fee is not specified, and that New Rule I(5)(a) also requires applicants to pay an application fee of \$100. The commenter then asks whether these fees may be duplicative.

Response No. 17: The electronic use convenience fee and the application fee are two different fees. The electronic use convenience fee described in New Rule I(3) is charged upon the initial UPAS submission (which covers the cost of the UPAS software system). New Rule I(5) distinguishes the application fee of \$100 which is due upon department notification to applicant. No further revision is necessary, and New Rule I will be adopted as proposed.

Comment No. 18: A commenter stated New Rule I(4)(b) should be revised to provide the department with discretion to permit facilities within the clear recovery area if the department finds that the facilities will not adversely affect safety or maintenance.

Response No. 18: New Rule I(4)(b) states "above-ground facilities or infrastructure must be located outside the clear recovery area without reduction in safety for the traveling public and without any impacts to standard maintenance operations unless otherwise approved by the department." No further revision is necessary, and New Rule I will be adopted as proposed.

Comment No. 19: A commenter stated New Rule I(9) should exempt from department approval those assignments of a right-of-way use agreement that do not change the entity that is in ultimate control of the facility owner. For example, entities holding right-of-way use agreements may desire to assign or transfer those agreements among subsidiaries or affiliated entities to streamline their organization or achieve other business purposes. The commenter stated there is no need for the department's review and approval in such instances because the entity that is ultimately in control of the facility owner remains the same.

Response No. 19: An assignment of a right-of-way use agreement, even among related entities, could be designed to transfer control of the facility and relieve the assignor of any and all duties, obligations, or liability associated with that agreement. Assignments, therefore, must be considered by the department on a case-by-case basis. New Rule I(9) will be adopted as proposed.

Comment No. 20: A commenter stated proposed New Rule I should be amended to incorporate or reference certain federal statutes and regulations delineating time constraints as well as the calculation of fees in relation to the permitting of wireless facilities.

Response No. 20: The department will comply with all applicable state and federal laws and regulations, to the best of its ability. In addition, 60-4-601, MCA, provides a timeline for applications and a method for calculating the right-of-way use agreement fees.

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Dwane Kailey for
Malcolm D. Long
Director
Department of Transportation

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I regarding the Bitterroot Valley)
Sanitary Landfill Controlled)
Groundwater Area)

TO: All Concerned Persons

1. On June 9, 2023, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-217 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 514 of the 2023 Montana Administrative Register, Issue Number 11.

2. The department has adopted the above-stated rule as proposed: New Rule I (36.12.909).

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT 1: The rule should be adopted as proposed.

RESPONSE 1: The department agrees.

COMMENT 2: How could an applicant satisfy the requirements of the proposed rule stating that an "applicant must demonstrate that proposed withdrawals will not contribute to expansion of the contaminated plume outside of the BVSL CGWA boundaries"?

RESPONSE 2: The boundaries of the proposed controlled groundwater area were drawn based on groundwater modeling generated by the Department of Environmental Quality (DEQ) using the most recent data collected at BVSL that builds upon and updates the modeling used to generate the original CGWA boundary to represent current conditions as accurately as possible. An applicant would need to provide new evidence and data that could be relied upon by DEQ in its boundary formulation demonstrating that groundwater withdrawals will not contribute to expansion of the plume.

COMMENT 3: Would DEQ or DNRC consider modeling more frequently to update the BVSL CGWA?

RESPONSE 3: The proposed rule does not dictate a modeling or CGWA revision interval; however, DEQ continues to annually monitor groundwater at BVSL. DEQ has indicated it will petition DNRC for appropriate changes to the CGWA if groundwater conditions warrant further changes.

COMMENT 4: Would DEQ or DNRC consider adding an additional deep well for a property owner who is still severely affected by this updated CGWA and possibly reimburse the whole or partial cost that was spent to get the DEQ 3 approval?

RESPONSE 4: The proposed rule does not pertain to "DEQ 3" approval and would not affect or dictate any reimbursement.

COMMENT 5: Would adding or reactivating abandoned monitoring wells affect the outcome of proposed CGWA modeling for future?

RESPONSE 5: DEQ hired a contractor to model groundwater within the historically contaminated area. That modeling is the basis for the boundary of the proposed CGWA. DNRC does not have information that indicates additional wells should be added to or reactivated within DEQ's current monitoring program. Wells were removed from the monitoring program once concentrations of contaminants at those locations no longer exceeded groundwater standards for a sufficient period. Further data collection at wells removed from the program is not likely to significantly affect groundwater modeling outcomes.

/s/ Brian Bramblett
Brian Bramblett
Rule Reviewer

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

| | | |
|---------------------------------------|---|------------------------|
| In the matter of the adoption of New |) | NOTICE OF ADOPTION AND |
| Rules I through XIV and the repeal of |) | REPEAL |
| ARM 37.104.101, 37.104.102, |) | |
| 37.104.105, 37.104.106, 37.104.107, |) | |
| 37.104.108, 37.104.109, 37.104.110, |) | |
| 37.104.111, 37.104.112, 37.104.114, |) | |
| 37.104.115, 37.104.120, 37.104.201, |) | |
| 37.104.202, 37.104.203, 37.104.204, |) | |
| 37.104.205, 37.104.206, 37.104.208, |) | |
| 37.104.212, 37.104.213, 37.104.218, |) | |
| 37.104.301, 37.104.305, 37.104.306, |) | |
| 37.104.307, 37.104.311, 37.104.312, |) | |
| 37.104.316, 37.104.319, 37.104.320, |) | |
| 37.104.321, 37.104.325, 37.104.326, |) | |
| 37.104.329, 37.104.330, 37.104.335, |) | |
| 37.104.336, 37.104.401, 37.104.404, |) | |
| 37.104.405, and 37.104.410 |) | |
| pertaining to emergency medical |) | |
| services |) | |

TO: All Concerned Persons

1. On July 7, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1017 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 620 of the 2023 Montana Administrative Register, Issue Number 13.

2. The department has adopted the following rules as proposed: New Rules II (37.104.504), III (37.104.505), IV (37.104.506), V (37.104.507), VI (37.104.508), VII (37.104.509), VIII (37.104.510), IX (37.104.513), X (37.104.514), XI (37.104.515), XII (37.104.516), and XIII (37.104.517).

3. The department has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (37.104.501) DEFINITIONS As used in this subchapter, the following definitions apply:

(1) through (30) remain as proposed.

(31) "Supplemental training" means training for registered nurses approved by the service manager of an emergency medical service licensed at the basic life support level of service, or the service medical director for all other levels of service.

A list of suggested training is set forth in Table 11 of the Emergency Medical Services Rule Appendix.

(a) through (34) remain as proposed.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

NEW RULE XIV (37.104.518) ADVISORY COMMITTEE (1) The purpose of the advisory committee is to advise the department consistent with 50-6-323, MCA, on matters including:

(a) through (c) remain as proposed.

(d) in consultation with the Department of Labor and Industry or the board, patient care standards and guidelines and guidance on supplemental training for registered nurses.

(2) through (5) remain as proposed.

AUTH: 50-6-323, MCA

IMP: 50-6-324, MCA

4. The department has repealed the above-stated rules as proposed.

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT #1: A commenter indicated that advanced life support (ALS) has historically meant paramedic-level service; otherwise, it would be basic life support (BLS) with authorization for ALS. The commenter indicated he understood the rationale behind the proposed change to the ALS definition is to enable billing at the higher ALS level for emergency medical technicians with endorsements. However, the commenter does not believe the proposed definition fairly represents the meaning of advanced life support.

RESPONSE #1: The proposed ALS definition removes inconsistencies within the rule language, provides EMS services with greater flexibility, and ensures public safety. The proposed change makes the definition of ALS consistent with the Board of Medical Examiners' medical direction requirements under ARM 24.156.2732 and continued competency requirements under ARM 24.156.2718. The proposed rule change allows an EMS service licensed at the ALS level to use other licensed advanced life support providers to meet staffing requirements. This benefits services that are unable to hire sufficient paramedic personnel.

COMMENT #2: A commenter stated the definition of "advanced life support (ALS)" is confusing as written because it includes all levels of service. The commenter questions whether including all levels of service is appropriate and states just because one AEMT can keep an IV going does not mean that service is an ALS service.

RESPONSE #2: It is unclear if the commenter is referencing the definition of "advanced life support" or the definition of "advanced life support service." The department believes the proposed change to the definition of advanced life support is clear as written. The proposed definition of advanced life support service removes inconsistencies in rule language, provides EMS services with greater flexibility, and ensures public safety. Please also see the response to comment #1.

COMMENT #3: A commenter indicated that the definition of "level of emergency medical service" includes a list that could be further clarified, but did not explain how they thought it could be clarified.

RESPONSE #3: The department believes the proposed rule language is clear as written.

COMMENT #4: A commenter stated that the definition of supplemental training under New Rule I would be more helpful if it incorporated a list. The commenter indicated inclusion of a list would be beneficial for the service manager and service medical director.

RESPONSE #4: The department agrees that providing guidance to the service manager and service medical director would be beneficial. The department has added a new table to the Emergency Medical Services Rule Appendix setting forth suggested supplemental training for registered nurses and revised New Rule I to reference the table. The department has also revised New Rule XIV to ensure training requirements are kept current.

COMMENT #5: A commenter stated New Rule II provides a list of responsibilities for the emergency medical service manager that includes ensuring the service medical director fulfills requirements of offline medical direction. The commenter questions if the manager has the education and training to meet this expectation.

RESPONSE #5: The department believes the proposed rule language provides clear guidance to the EMS service manager relating to the service medical director's responsibilities for offline medical direction. As a result, the department believes that the manager will be able to meet this expectation.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.34.3005 pertaining to)
Developmental Disabilities Program)
Reimbursement for Services)

TO: All Concerned Persons

1. On July 21, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1036 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 698 of the 2023 Montana Administrative Register, Issue Number 14.

2. The department has amended the following rule as proposed: ARM 37.34.3005.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

Comment 1: Multiple comments were received questioning why the department is proposing to bundle transportation costs into certain services, such as residential and day service rates, rather than reimburse using a stand-alone rate.

Response 1: The Guidehouse provider rate study and final report recommended the department bundle transportation costs into most residential and day service rates. The department considered the Guidehouse recommendations, which were made after extensive study of rates and provider costs as well as receiving input from providers and stakeholders, and agreed with the report's final recommendations regarding bundling transportation costs.

Comment 2: A commenter noted that proposed language favors face-to-face encounters for certain services and expressed concern that the department views telehealth encounters as substandard.

Response 2: The department is committed to expanding access to services through telehealth. The rule states that face-to-face encounters are preferred but telehealth encounters are permitted with documentation of why a service was provided as telehealth. The comprehensive benefit package includes services that are intended to be delivered in person due to the nature of the service.

Comment 3: The department received a comment about how the Guidehouse rate study was interpreted for Applied Behavior Analysis (ABA) rates. The commenter

requested the department doublecheck the numbers for ABA services and noted there is no proposal to increase ABA rates for inflation.

Response 3: The department would like to clarify that the Behavioral Support Services in the Developmental Disabilities 0208 Waiver were part of the Guidehouse rate study. However, the ABA rates were not part of that study and are outside the scope of this rulemaking. A similar question was submitted for MAR Notice No. 37-1037, and the commenter is encouraged to view the department's response in that notice.

4. The department intends to apply these rule amendments retroactively to July 1, 2023.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State August 29, 2023

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.79.326, 37.85.104,)
37.85.105, 37.85.106, 37.86.3607,)
and 37.87.1226 pertaining to)
updating Medicaid and non-Medicaid)
provider rates, fee schedules, and)
effective dates)

TO: All Concerned Persons

1. On July 7, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1037 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 646 of the 2023 Montana Administrative Register, Issue Number 13.

2. The department has amended the following rules as proposed: ARM 37.79.326, 37.85.106, 37.86.3607, and 37.87.1226.

3. In the proposal notice, the department inadvertently proposed 4% increases to rates for some services on the substance use disorder (SUD) non-Medicaid fee schedule. Those rates had already increased to 100% of benchmark in October 2022. The department, therefore, has removed the SUD non-Medicaid fee schedule cited in ARM 37.85.104(1)(d) from this rule notice to permit finalizing remaining rates without delay. At a future date, the department intends to file a rule notice relating to the non-Medicaid SUD rates.

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) The department adopts and incorporates by reference the fee schedule for the following programs within the Behavioral Health and Developmental Disabilities Division on the dates stated:

(a) through (c) remain as proposed.

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.905, is effective October 1, 2022 ~~July 1, 2023~~.

(2) remains as proposed.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) through (2)(a) remain as proposed.

(b) Fee schedules are effective July 1, 2023. The conversion factor for physician services is \$44.32. The conversion factor for allied services is \$26.13. The conversion factor for mental health services is \$22.67. The conversion factor for anesthesia services is ~~\$30.57~~ \$32.04.

(c) Policy adjusters are effective July 1, 2022. The maternity policy adjuster is 100%. The family planning policy adjuster is 105%. The psychological testing policy adjuster is ~~145%~~ 200%. The psychological testing policy adjuster applies only to psychologists.

(d) through (6) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT #1: Two commenters requested the department consider raising shelter care rates equivalent to the Governor's provider rate study benchmarks to ensure the continued availability of shelter care for youth in the continuum of care.

RESPONSE #1: The department thanks the commenters for their comment, but notes that the comment is outside the scope of this rulemaking.

COMMENT #2: The commenters' assisted living business cannot support the best level of care with staffing, nutritious food, and engaging activities at the current rate. An increase in the daily rate would allow the provider to compete with local fast-food companies for staff. They proposed an increase to the daily rate from \$104.31 to an amount ranging anywhere from \$125 to \$145, which they said would realistically ensure excellent care with qualified staff and meet monthly expenses.

RESPONSE #2: The residential habilitation Level 1 Assisted Living and Adult Foster Care rate was set after consideration of the results of the provider rate study and the available appropriation. The provider rate study considered the factors listed by the commenter. Additionally, the department considered the non-exhaustive list of factors under 53-6-113, MCA, when setting rates. The rate will remain as proposed.

COMMENT #3: One commenter expressed support for the proposed Medicaid reimbursement rate increase for assisted living facilities but raised concern about room and board allowances, which have remained unchanged since 2009. The commenter advocated for a methodology in line with social security adjustments, as outlined in Senate Bill (SB) 296, and requested implementation of a Level 2 - Assisted Living Behavioral Management rate, emphasized the need for a process to

update rates for inflation and labor costs, and recommended amendments to the proposed rules.

RESPONSE #3: The department thanks the commenter for the comment, but notes that SB 296 was not enacted into law and that the comments regarding room and board allowances are outside the scope of this rule making. The department established a Level 2 - Assisted Living Behavioral Management rate and is committed to establishing criteria for Level 2 - Assisted Living Behavioral Management coverage. The rate will remain as proposed.

COMMENT #4: A commenter states there is a discrepancy in the proposed amendment to ARM 37.87.1226 and noted an oversight in the reimbursement rate for activities of daily living (ADLs). The commenter indicated ADLs, which include essential tasks like bathing and meal preparation, require more skill and training and, therefore, should be reimbursed at a higher rate than other services like community supports and escort.

RESPONSE #4: The department reviewed the three rates in question and confirmed an inconsistent application of the occupational category and the amount for staff travel costs. The department corrected this inconsistency by applying the same occupational category for all three services and reallocating the total amount of staff travel, primarily to the Community First Choice/Personal Assistance Services (CFC/PAS) rate, and a lesser amount to the Medical Escort Rate for occasions where Medicaid travel is not available. From these rates, the percent to the benchmark calculation was applied using the same percentages as the original calculation. The staff travel factor for the Community Supports rate was eliminated, as mileage is available with this service. The newly adjusted rates, which apply to both state plan and Big Sky Waiver Services, are shown below with the originally proposed incorrect rates stricken through and the correct rates underlined:

| | |
|--------------------|---------------------------------|
| CFC/PAS | \$5.86 <u>\$7.99</u> |
| Medical Escort | \$8.46 <u>\$7.53</u> |
| Community Supports | \$8.40 <u>\$7.43</u> |

The same anomaly was found in the self-directed (SD) rates. Those rates were adjusted in the same manner as described above. The newly adjusted rates are as follows:

| | |
|-----------------------|---------------------------------|
| SD CFC/PAS | \$6.52 <u>\$6.82</u> |
| SD Medical Escort | \$7.00 <u>\$6.35</u> |
| SD Community Supports | \$6.90 <u>\$6.25</u> |

Last it was noted that non-medical mileage under state plan CFC/PAS and SD CFC/PAS was not addressed in the study; however, it should be equal to the rate determined for the Big Sky Waiver, or \$0.51/mile, and the rate has been revised accordingly.

COMMENT #5: Rate adjustments to neurological services on the RBRVS fee schedule following the provider rate study do not consider general inflation, post-pandemic operating costs, and pay discrepancies between mental health and physical medicine providers. Proposed rate increases do not neutralize rate decreases experienced since 2019. Reimbursement rates for a typical neuropsychological evaluation were greater ten years ago than they are in the proposed 2024 RBRVS fee schedule. The frequency/usage of a code is a flawed metric of RBRVS as highly specialized services will never have a high usage or variability in usage due to a limited number of clinicians able to perform the services. Poor reimbursement rates lead to a loss of providers and longer waitlists for Medicaid recipients, resulting in a decrease in available services and especially impacting neurological evaluation services.

RESPONSE #5: The department's goal is to maintain access for behavioral health services through the provider rate study. Psychological testing codes were not considered within the provider rate study. The department, however, recognizes this service is an essential part of the behavioral health continuum with current access challenges. The department acknowledges rates for psychological testing codes have not been addressed since 2019. While the department is unable to update or impact RVUs in response to this comment, the department will increase the psychological testing policy adjuster to 200%. The department believes this will help increase access to psychological testing services. The psychological testing policy adjuster is adopted in ARM 37.85.105 and, in response to this comment, will be updated in rule and reflected on the July 2023 RBRVS Fee Schedule for SFY 2024.

COMMENT #6: The department received several questions and concerns regarding the 4% rate increase to Applied Behavior Analysis (ABA) services. Some commenters expressed the opinion that the 4% rate increase is not sufficient to address inflation or meet legislative intent and requested the department double-check the numbers. Other commenters expressed the opinion that the 4% rate increase does not reflect the recommendations in the Guidehouse study or that BCBA rates were established on incorrect assumptions about the Guidehouse Rate Study's scope.

RESPONSE #6: The department thanks everyone for the comments, insights, and recommendations regarding this topic. The department would like to clarify that the Behavioral Support Services in the Developmental Disabilities 0208 Waiver were part of the Guidehouse rate study. The ABA rates included in this rulemaking, however, were not part of that study and, thus, Guidehouse did not provide benchmark rates for these services. The 2023 Legislature appropriated funding for a 4% provider rate increase for services not included in the Guidehouse study. This 4% rate increase, approved by the legislature, is based off the resource-based relative value scale (RBRVS) calculations and policy adjusters.

COMMENT #7: One commenter stated that the 2025 Biennium Provider Rate Graphic with a current rate of 76% was misleading, implying that these services would be seeing an increase commensurate with other services. The commenter

requested in the future, that this information be communicated more clearly to legislators and providers by identifying in the figures whether funding for a given category is from 0208 Waiver or Medicaid.

RESPONSE #7: The department appreciates this feedback and would like to clarify that the 0208 Waiver is a Medicaid program. Additionally, the commenter's request is outside the scope of this rulemaking which is to implement the 2023 legislature-approved rates.

COMMENT #8: A commenter stated that rate changes from a previous rulemaking reduced the reimbursement for co-occurring clients receiving substance use disorder (SUD) Intensive Outpatient (ASAM 2.1) services.

RESPONSE #8: The department thanks the commenter for the comment, but notes that this comment is outside the scope of this rulemaking. The department amended policy during the previous rulemaking to allow co-occurring mental health services to be billable concurrently with the weekly bundled rate for ASAM 2.1. The bundled rate was developed by the contractor that performed the provider rate review for the department. The department will take the comment under consideration.

COMMENT #9: A commenter stated that rates will not sustain ASAM 3.1 services due to staffing requirements and asked the department to reevaluate the rates.

RESPONSE #9: Program costs were included in the methodology used to develop the rates. The proposed bundled rates for substance use disorder levels of care were developed by the contractor that performed the provider rate review for the department. The contractor reviewed the ASAM Criteria and considered several factors in the development of the rates including staff wages provided through provider surveys, staff time needed to deliver the service, clinical supervision, productivity adjustment, administrative costs, program support costs, and staff benefits/compensation. However, the department will take the comment under consideration.

COMMENT #10: A commenter asked why the rates for adult mental and substance use disorder targeted case management (TCM) are different on the behavioral health TCM fee schedule.

RESPONSE #10: The department agrees the rates should be aligned, and fee schedules will be adjusted accordingly.

COMMENT #11: A commenter provided examples of inconsistencies for crisis services between non-Medicaid and Medicaid fee schedules.

RESPONSE #11: The non-Medicaid and Medicaid fee schedules are intended to be aligned, and the fee schedules will be adjusted accordingly.

COMMENT #12: A commenter stated that Mobile Crisis Response Services rates won't cover costs associated with operation of a mobile crisis team. The commenter also suggested a productivity factor be included in the rates to support reduced productivity associated with overnight trends, decreased productivity times, and non-face-to-face interactions due to safety concerns or logistical barriers.

RESPONSE #12: Reimbursement rates are intended to cover the costs of services being delivered to individuals that meet eligibility for either Medicaid or Non-Medicaid coverage. The proposed bundled rates for mobile crisis response services were developed by the contractor that performed the provider rate review for the department. The contractor reviewed and considered several factors in the development of the rates including staff wages provided through provider surveys, staff time needed to deliver the service, productivity adjustment, administrative costs, program support costs, and staff benefits/compensation.

COMMENT #13: A commenter suggested the department expand coverage for Non-Medicaid Mental Health Crisis Services for individuals that do not qualify for Medicaid and whose income falls between 0-150% of the federal poverty level (FPL).

RESPONSE #13: The department acknowledges receipt of this comment, but notes that the comment is outside the scope of this rulemaking. The department recognizes that providers and partner agencies have invaluable knowledge and experience regarding the delivery of services. The department will take this recommendation under consideration.

COMMENT #14: A commenter offered support for the proposed rate increases, in particular comprehensive school and community treatment (CSCT) services.

RESPONSE #14: The department acknowledges this feedback and believes that the proposed rate increases will enhance CSCT service provision.

COMMENT #15: A commenter requested the department consider returning to the fee for service reimbursement model of the 15-minute unit rate from the current daily rate to address provider-identified unintended consequences.

RESPONSE #15: The department acknowledges this comment and will take this under advisement.

COMMENT #16: One commenter recommended that DPHHS use the cost analysis performed by Guidehouse to inform an adequate rate increase for ABA services.

RESPONSE #16: The department appreciates the recommendation. However, as indicated above, the 2023 Legislature appropriated funding for a 4% rate increase for all services not included in the Guidehouse rate study.

COMMENT #17: One commenter recommended a geographic rate differential for ABA services due to increases in cost of living.

RESPONSE #17: The department appreciates the recommendation. However, the implementation of a geographic rate differential is outside the scope of this rulemaking. As indicated above, the 2023 Legislature appropriated funding for a 4% rate increase for services not included in the Guidehouse study which includes ABA services; this rulemaking is intended to implement that rate increase.

COMMENT #18: The department received a public comment from the Montana Medical Association stating "the amendment to ARM 37.85.105(2)(b) has adjustments for the conversion factor for physician services, allied services, and mental health services. There is not an adjustment in the conversion factor for anesthesia services. The MMA requests the same consideration for anesthesia services."

RESPONSE #18: The physician conversion factor is subject to annual consumer price index (CPI) rate increases 4.8%, effective June 30, 2022, as provided in 53-6-125, MCA. Allied and mental health services are not subject to the annual CPI rate increase; however, they were appropriated a 4% provider rate increase through legislation. The physician conversion factor was exempt from this 4% increase. Considering these factors, the department agrees to increase anesthesia services by the 4.8% CPI.

COMMENT #19: A commenter asked for clarification about providing targeted case management (TCM) for non-Medicaid mental health crisis clients, including who TCM can be provided to and when it can be provided.

RESPONSE #19: This comment is outside the scope of this rulemaking. Service requirements for covered services can be found in the BHDD Medicaid manual. The requirements for mental health TCM can be found in Policy 405.

6. These rule amendments are retroactively effective July 1, 2023.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State August 29, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.40.307 pertaining to nursing)
facility reimbursement)

TO: All Concerned Persons

1. On July 7, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1038 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 663 of the 2023 Montana Administrative Register, Issue Number 13.

2. The department has amended the above-stated rule as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT #1: A commenter states the proposed rate does not cover the actual cost of care.

RESPONSE #1: The nursing facility base rate was set after consideration of the results of the provider rate study and balancing of the factors that may be considered under 53-6-113, MCA, and ARM 37.40.307(2). In balancing these factors, the department's primary consideration was the availability of appropriated funds and availability of services.

COMMENT #2: A commenter states the funding for the nursing home rate increase proposed in this rule is less than the funding the department projected during the legislative session.

RESPONSE #2: The department accurately projects rates throughout the legislative session, but none of them are binding. In setting provider rates, including the rates generally applicable to nursing home services, the department has to consider many issues. In considering provider rates, the department determined that it needed to allocate (and, thus, partially hold back) appropriated funds to address the costs of complex care services in an effort to provide for the increased availability of services to meet complex care needs. This hold back of funds was applied equally across providers. Please also see the response to comment #1.

COMMENT #3: A commenter states the department should analyze the relationship between Medicaid rates, the Medicaid census, and survey deficiencies to be able to make findings and assurances that payment rates appropriately account for costs of compliance with federal requirements.

RESPONSE #3: The department recognizes the relationship, as does the provider rate study. Please also see the response to comment #1.

COMMENT #4: A commenter states facilities across the state are declining new admissions due to the current workforce shortage and elevated labor costs. As a result, individuals in need of post-hospital care are facing extended stays in hospitals, as they encounter difficulties in securing placement in skilled nursing facilities for further treatment.

RESPONSE #4: The department is aware of the issues raised by the commenter. The proposed rate significantly increases Medicaid nursing facility reimbursement by providing for a 23.02% rate increase compared to SFY 2023.

4. The department intends to apply the rule amendment retroactively to July 1, 2023. A retroactive application of the proposed rule amendment will not result in a negative impact to any affected party.

/s/ Heidi Sanders

Heidi Sanders
Rule Reviewer

/s/ Charles T. Brereton

Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State August 29, 2023.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known
Subject

1. Consult ARM Topical Index.
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2023. This table includes notices in which those rules adopted during the period March 10, 2023, through August 26, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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CHRISTI JACOBSEN
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620